UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): February 9, 2021

CHESAPEAKE ENERGY CORPORATION

(Exact name of Registrant as specified in its Charter)

Oklahoma	**1-13726**	**73-1395733**
(State or other jurisdiction of incorporation)	(Commission File No.)	(IRS Employer Identification No.)

6100 North Western Avenue	**Oklahoma City**	**OK**	**73118**
(Address of principal executive offices)			(Zip Code)

(405) 848-8000
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act: **None.**

Title of each class	Trading Symbol	Name of each exchange on which registered
N/A	N/A	N/A

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Explanatory Note:

As previously disclosed on June 28, 2020, Chesapeake Energy Corporation ("Chesapeake" or the "Company") and certain of its subsidiaries (together with Chesapeake, the "Debtors") filed voluntary petitions for reorganization under Chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases") in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court"). The Company's Chapter 11 Cases were jointly administered under the caption *In re Chesapeake Energy Corporation, et al.*, No. 20-33233 (DRJ).

On January 16, 2021, the Bankruptcy Court entered an order (the "Confirmation Order") confirming the *Fifth Amended Joint Chapter 11 Plan of Reorganization of Chesapeake Energy Corporation and Its Debtor Affiliates* (the "Plan"). The Confirmation Order, to which the Plan is attached as Exhibit A, was previously filed as Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the U.S. Securities and Exchange Commission (the "Commission") on January 19, 2021, and is hereby incorporated by reference as Exhibit 2.1 to this Current Report on Form 8-K (this "Current Report").

On February 9, 2021 (the "Effective Date"), the Plan became effective in accordance with its terms and the Debtors emerged from the Chapter 11 Cases.

Item 1.01 Entry Into a Material Definitive Agreement.

Exit Credit Facility

On the Effective Date, pursuant to the terms of the Plan, the Company, as borrower, entered into a reserve-based credit agreement (the "Credit Agreement") with the lenders party thereto (the "Lenders"), MUFG Bank, Ltd., as administrative agent (in such capacity, the "Administrative Agent"), MUFG Union Bank, N.A., as collateral agent, and acknowledged and agreed to by certain of the Company's subsidiaries, as guarantors (the "Guarantors"), providing for a reserve-based credit facility (the "Exit Credit Facility") with an initial borrowing base of $2.5 billion. The borrowing base will be redetermined semiannually on or around May 1 and November 1 of each year, with one interim "wildcard" redetermination available to each of the Company and the Administrative Agent, at the direction of certain lenders, between scheduled redeterminations. The next scheduled redetermination will be on or about October 1, 2021. The aggregate initial elected commitments of the lenders under the Exit Credit Facility will be $1.75 billion of revolving Tranche A Loans (the "Tranche A Loans") and $0.22 billion of fully funded Tranche B Loans (the "Tranche B Loans") on the Effective Date.

The Exit Credit Facility provides for a $200.0 million sublimit of the aggregate commitments that are available for the issuance of letters of credit. The Exit Credit Facility bears interest at the ABR (alternate base rate) or LIBOR, at our election, plus an applicable margin (ranging from 2.25–3.25% per annum for ABR loans and 3.25–4.25% per annum for LIBOR loans, subject to a 1.00% LIBOR floor), depending on the percentage of the borrowing base then being utilized. The Tranche A Loans mature 3 years after the Effective Date and the Tranche B Loans mature 4 years after the Effective Date. The Tranche B Loans can be repaid if no Tranche A Loans are outstanding.

The Credit Agreement contains financial covenants that require the Company and its Guarantors, on a consolidated basis, to maintain (i) a first lien leverage ratio of not more than 2.75 to 1:00, (ii) a total leverage ratio of not more than 3.50 to 1:00, (iii) a current ratio of not less than 1.00 to 1:00 and (iv) except when testing is not required under the Credit Agreement, an asset coverage ratio of not less than 1.50 to 1:00.

The Company is required to pay a commitment fee of 0.50% per annum on the average daily unused portion of the current aggregate commitments under the Tranche A Loans. The Company is also required to pay customary letter of credit and fronting fees.

The Credit Agreement also contains customary affirmative and negative covenants, including, among other things, as to compliance with laws (including environmental laws and anti-corruption laws), delivery of quarterly and annual financial statements, conduct of business, maintenance of property, maintenance of insurance, restrictions on the incurrence of liens, indebtedness, asset dispositions, fundamental changes, restricted payments, and other customary covenants.

Additionally, the Credit Agreement contains customary events of default and remedies for credit facilities of this nature. If the Company does not comply with the financial and other covenants in the Credit

Agreement, the Lenders may, subject to customary cure rights, require immediate payment of all amounts outstanding under the Credit Agreement and any outstanding unfunded commitments may be terminated.

This summary of the Credit Agreement does not purport to be complete and is subject to, and qualified in its entirety by reference to, the full text of the Credit Agreement, which is filed as Exhibit 10.1 to this Current Report and incorporated herein by reference.

Guarantee and Security of the Exit Credit Facility

The obligations under the Exit Credit Facility are guaranteed by the Company and the Guarantors (collectively, the "Loan Parties") and secured by substantially all of the Loan Parties' assets (subject to customary exceptions), including mortgages on not less than 90% of the PV-10 of proven reserves set forth on the reserve report and a guaranty and collateral agreement pursuant to which the Loan Parties granted a first lien security interest in all of the collateral described therein and the Guarantors guaranteed the payment and performance of all indebtedness and liabilities arising pursuant to, or in connection with, the Credit Agreement.

Senior Unsecured Notes Indenture

On February 2, 2021, Chesapeake Escrow Issuer LLC (the "Escrow Issuer") an indirect wholly-owned subsidiary of the Company, issued $500 million aggregate principal amount of its 5.500% senior notes due 2026 (the "2026 Notes") and $500 million aggregate principal amount of its 5.875% senior notes due 2029 (the "2029 Notes" and, together with the 2026 Notes, the "Notes").

The offering of the Notes is part of a series of exit financing transactions being undertaken in connection with the Debtors' Chapter 11 Cases and pursuant to the terms of the Plan as approved by the Bankruptcy Court on January 16, 2021.

The Notes are guaranteed on a senior unsecured basis by each of the Company's subsidiaries that guarantee the Exit Credit Facility. The gross proceeds from the offering of the Notes were deposited into a segregated escrow account (the "Escrow Account") and will be released upon satisfaction of certain escrow release conditions (the "Escrow Conditions"), including the occurrence of the Effective Date. Prior to the satisfaction of the Escrow Conditions, the Notes are secured by a lien on amounts deposited into the Escrow Account.

If the Escrow Conditions are not met, the notes are subject to a special mandatory redemption at a special mandatory redemption price of 100% of the principal amount of such series of notes offered hereby, plus accrued and unpaid interest up to, but not including, the date of redemption. On the Effective Date, the Company assumed the Notes and the obligations of the Escrow Issuer under the Notes and the Indenture (as defined below). The term "Issuer" refers to (a) prior to the Effective Date, the Escrow Issuer, and (b) from and after the Effective Date, the Company.

The Notes were issued pursuant to an indenture, dated as of February 5, 2021 (the "Indenture"), among the Issuer, the Guarantors and Deutsche Bank Trust Company Americas, as trustee.

Maturity and Interest Rate Payments

The 2026 Notes will mature on February 1, 2026.

The 2029 Notes will mature on February 1, 2029.

Interest on the Notes will be payable semi-annually, on February 1st and August 1st of each year, commencing on August 1, 2021, to holders of record on the immediately preceding January 15th and July 15th, as the case may be.

Ranking

The Notes are the Company's senior unsecured obligations. Accordingly, they rank (i) equal in right of payment to all existing and future senior indebtedness, including borrowings under the Exit Credit Facility, (ii) effectively subordinate in right of payment to all of existing and future secured indebtedness, including indebtedness

under the Exit Credit Facility, to the extent of the value of the collateral securing such indebtedness, (iii) structurally subordinate in right of payment to all existing and future indebtedness and other liabilities of any future subsidiaries that do not guarantee the notes and any entity that is not a subsidiary that does not guarantee the notes and (iv) senior in right of payment to all future subordinated indebtedness. Each guarantee of the notes by a guarantor is a general, unsecured, senior obligation of such guarantor. Accordingly, the guarantees (i) rank equally in right of payment with all existing and future senior indebtedness of such guarantor (including such guarantor's guarantee of indebtedness under the Exit Credit Facility), (ii) are subordinated to all existing and future secured indebtedness of such guarantor, including such guarantor's guarantee of indebtedness under our Exit Credit Facility, to the extent of the value of the collateral of such guarantor securing such secured indebtedness, (iii) are structurally subordinated to all indebtedness and other liabilities of any future subsidiaries of such guarantor that do not guarantee the notes and (iv) rank senior in right of payment to all future subordinated indebtedness of such guarantor.

Covenants

The Indenture contains covenants limiting the Issuer's and certain restricted subsidiaries' ability to (i) incur additional debt and issue preferred stock, (ii) incur or create liens, (iii) pay dividends or distributions in respect of certain equity interests or redeem, repurchase or retire certain equity interests or subordinated indebtedness, (iv) make certain investments, (v) engage in specified sales of assets, (vi) enter into transactions with affiliates, (vii) engage in consolidation, mergers and acquisitions and (viii) create unrestricted subsidiaries. These covenants contain important exceptions, limitations and qualifications. At any time that the Notes are rated investment grade, certain covenants will be terminated and cease to apply.

Optional Redemption

The Issuer may redeem some or all of the 2026 Notes at any time prior to February 5, 2023 at a price equal to 100% of the principal amount of the 2026 Notes redeemed plus a "make-whole" premium, plus accrued and unpaid interest, if any, to the date of redemption. The Issuer may redeem some or all of the 2026 Notes at any time on or after February 5, 2023 at the redemption price set forth in the Indenture. In addition, at any time prior to February 5, 2023, up to 35% of the original aggregate principal amount of the 2026 Notes may be redeemed with the net proceeds of certain equity offerings, at the redemption price specified in the Indenture.

The Issuer may redeem some or all of the 2029 Notes at any time prior to February 5, 2024 at a price equal to 100% of the principal amount of the 2029 Notes redeemed plus a "make-whole" premium, plus accrued and unpaid interest, if any, up to the date of redemption. The Issuer may redeem some or all of the 2029 Notes at any time on or after February 5, 2024 at the redemption price set forth in the Indenture. In addition, at any time prior to February 5, 2024, up to 35% of the original aggregate principal amount of the 2029 Notes may be redeemed with the net proceeds of certain equity offerings, at the redemption price specified in the Indenture.

Change of Control

Upon the occurrence of a change of control, the Issuer must offer to purchase the Notes at 101% of the aggregate principal amount of such Notes, plus accrued and unpaid interest, if any, up to the date of repurchase.

Events of Default

The Indenture also provides for customary events of default which, if certain of them occur: (i) would make all outstanding Notes due and payable immediately; or (ii) would allow the trustee or the holders of at least 25% in aggregate principal amount of the then outstanding Notes to declare the principal of and accrued and unpaid interest, if any, on all the Notes to be due and payable by notice in writing to the Issuer and, upon such declaration, such principal and accrued and unpaid interest, if any, will be due and payable immediately.

Registration Rights Agreement

Pursuant to the Plan, on the Effective Date, the Company entered into a Registration Rights Agreement (the "Registration Rights Agreement") with certain stockholders (the "Holders"). The Registration Rights Agreement provides resale registration rights for the Holders' Registrable Securities (as defined in the Registration Rights Agreement).

Pursuant to the Registration Rights Agreement, the Company is required to file or confidentially submit a Resale Shelf Registration Statement (as defined in the Registration Rights Agreement) with respect to the Registrable Securities within 30 days of the Effective Date, or within 90 days of the Effective Date if "fresh start" accounting is required. The Company is required to maintain the effectiveness of any such registration statement until the Registrable Securities covered by the registration statement are no longer Registrable Securities or the Registrable Securities issued to the Holders may be sold in a single transaction without limitation under Rule 144. Additionally, the Holders have customary demand, underwritten offering and piggyback registration rights, subject to the limitations set forth in the Registration Rights Agreement.

These registration rights are subject to certain conditions and limitations, including the right of underwriters to limit the number of shares to be included in a registration statement and the Company's right to delay or withdraw a registration statement under certain circumstances. The Company will generally pay all registration expenses in connection with its obligations under the Registration Rights Agreement, regardless of whether a registration statement is filed or becomes effective. The registration rights granted in the Registration Rights Agreement are subject to customary indemnification and contribution provisions.

The obligations to register the Registrable Securities under the Registration Rights Agreement will terminate with respect to the Company and each Holder on the first date upon which such Holder no longer owns any Registrable Securities.

The description of the Registration Rights Agreement does not purport to be complete and is qualified in its entirety by reference to the Registration Rights Agreement, which is filed as Exhibit 10.2 to this Current Report and incorporated herein by reference.

Warrant Agreements

On the Effective Date and pursuant to the Plan, the Company entered into (i) a Warrant Agreement (the "Class A Warrant Agreement") with Equiniti Trust Company, a New York limited trust company, as warrant agent (the "Warrant Agent"), which provides for the Company's issuance of up to an aggregate of 11,111,111 Class A warrants (the "Class A Warrants") to purchase the common stock of the Company, par value $0.01 per share, as reorganized pursuant to and under the Plan (the "New Common Stock") to former holders of the Company's Second Lien Notes (as defined below) on the Effective Date in accordance with the terms of the Plan, the Confirmation Order and the Class A Warrant Agreement, (ii) a Warrant Agreement (the "Class B Warrant Agreement") with the Warrant Agent, which provides for the Company's issuance of up to an aggregate of 12,345,679 Class B warrants (the "Class B Warrants") to purchase New Common Stock to former holders of the Company's Second Lien Notes on the Effective Date in accordance with the terms of the Plan, the Confirmation Order and the Class B Warrant Agreement and (iii) a Warrant Agreement (the "Class C Warrant Agreement" and, together with the Class A Warrant Agreement and the Class B Warrant Agreement, the "Warrant Agreements") with the Warrant Agent, which provides for the Company's issuance of up to an aggregate of 13,717,420 Class C warrants (the "Class C Warrants" and, together with the Class A Warrants and the Class B Warrants, the "Warrants") to purchase New Common Stock to former holders of the Company's Second Lien Notes and Unsecured Notes (as defined below) on the Effective Date in accordance with the terms of the Plan, the Confirmation Order and the Class C Warrant Agreement.

The Warrants are exercisable from the date of issuance until the earlier of the 5th anniversary of the Effective Date and the consummation of a Liquidity Event (as defined in the Warrant Agreements), at which time all unexercised Warrants will expire, and the rights of the holders of such expired Warrants to purchase New Common Stock will terminate. The Class A Warrants are initially exercisable for one share of New Common Stock per Class A Warrant at an initial exercise price of $27.63 per Class A Warrant (the "Class A Exercise Price"), the Class B Warrants are initially exercisable for one share of New Common Stock per Class B Warrant at an initial exercise price of $32.13 per Class B Warrant (the "Class B Exercise Price") and the Class C Warrants are initially exercisable for one share of New Common Stock per Class C Warrant at an initial exercise price of $36.18 per Class C Warrant (the "Class C Exercise Price" and, together with the Class A Exercise Price and Class B Exercise Price, the "Exercise Prices"), in each case subject to the cashless exercise provisions contained in the Warrant Agreements and subject to adjustment in certain circumstances.

Pursuant to the Warrant Agreements, no holder of a Warrant, by virtue of holding or having a beneficial interest in a Warrant, will have the right to vote, receive dividends, receive notice as stockholders with respect to any

meeting of stockholders for the election of the Company's directors or any other matter, or exercise any rights whatsoever as a stockholder of the Company unless, until and only to the extent such holders become holders of record of shares of New Common Stock issued upon settlement of Warrants.

The number of shares of New Common Stock for which a Warrant is exercisable, and the Exercise Prices, are subject to customary adjustments from time to time upon the occurrence of certain events, including: (1) stock splits, reverse stock splits or stock dividends to holders of New Common Stock or (2) a reclassification in respect of the New Common Stock.

The foregoing description of the Warrant Agreements does not purport to be complete and is subject to, and qualified in its entirety by reference to, the full text of the Warrant Agreements, which are filed as Exhibits 10.3, 10.4 and 10.5 respectively, to this Current Report and incorporated by reference herein.

Item 1.02. Termination of Material Definitive Agreement.

Equity Interests

In accordance with the Plan, all agreements, instruments and other documents evidencing, relating to or otherwise connected with any of the Company's equity interests outstanding prior to the Effective Date were cancelled, released and extinguished without any distribution.

Debt Securities

In accordance with the Plan, on the Effective Date, all outstanding obligations under the following notes issued by the Company and the related registration rights were cancelled and the indentures governing such obligations were cancelled, except to the limited extent expressly set forth in the Plan:

- $2,330 million in outstanding aggregate principal amount of the 11.500% Senior Notes due 2025 (the "Second Lien Notes") issued pursuant to the indenture dated December 19, 2019, by and among the Company, the subsidiary guarantors party thereto and Deutsche Bank Trust Company Americas, as trustee and collateral trustee;
- $176 million in outstanding aggregate principal amount of the 6.625% Senior Notes due 2020 (the "6.625% Senior Notes"), issued pursuant to the indenture dated August 2, 2010, by and among the Company, the subsidiary guarantors party thereto and The Bank of New York Trust Company, N.A., as trustee;
- $74 million in outstanding aggregate principal amount of the 6.875% Senior Notes due 2020 (the "6.875% 2020 Senior Notes"), issued pursuant to the indenture dated November 8, 2005, by and among the Company, the subsidiary guarantors party thereto and The Bank of New York Trust Company, N.A., as trustee;
- $166 million in outstanding aggregate principal amount of the 6.125% Senior Notes due 2021 (the "6.125% Senior Notes"), issued pursuant to the indenture dated February 11, 2011, by and among the Company, the subsidiary guarantors party thereto and The Bank of New York Trust Company, N.A., as trustee;
- $127 million in outstanding aggregate principal amount of the 5.375% Senior Notes due 2021 (the "5.375% Senior Notes"), issued pursuant to the indenture dated April 1, 2013, by and among the Company, the subsidiary guarantors party thereto and Wilmington Savings Fund Society, FSB, as trustee;
- $272 million in outstanding aggregate principal amount of the 4.875% Senior Notes due 2022 (the "4.875% Senior Notes"), issued pursuant to the indenture dated April 24, 2014, by and among the Company, the subsidiary guarantors party thereto and Wilmington Savings Fund Society, FSB, as trustee;

- $168 million in outstanding aggregate principal amount of the 5.750% Senior Notes due 2023 (the "5.750% Senior Notes"), issued pursuant to the indenture dated April 1, 2013, by and among the Company, the subsidiary guarantors party thereto and Wilmington Savings Fund Society, FSB, as trustee;

- $623 million in outstanding aggregate principal amount of the 7.000% Senior Notes due 2024 (the "7.000% Senior Notes"), issued pursuant to the indenture dated September 27, 2018, by and among the Company, the subsidiary guarantors party thereto and Wilmington Savings Fund Society, FSB, as trustee;

- $246 million in outstanding aggregate principal amount of the 8.000% Senior Notes due 2025 (the "8.000% 2025 Senior Notes"), issued pursuant to the indenture dated December 20, 2016, by and among the Company, the subsidiary guarantors party thereto and Wilmington Savings Fund Society, FSB, as trustee;

- $46 million in outstanding aggregate principal amount of the 8.000% Senior Notes due 2026 (the "8.000% 2026 Senior Notes"), issued pursuant to the indenture dated April 3, 2019, by and among the Company, the subsidiary guarantors party thereto and Wilmington Savings Fund Society, FSB, as trustee;

- $119 million in outstanding aggregate principal amount of the 7.500% Senior Notes due 2026 (the "7.500% Senior Notes"), issued pursuant to the indenture dated September 27, 2018, by and among the Company, the subsidiary guarantors party thereto and Wilmington Savings Fund Society, FSB, as trustee;

- $253 million in outstanding aggregate principal amount of the 8.000% Senior Notes due 2027 (the "8.000% 2027 Senior Notes"), issued pursuant to the indenture dated June 6, 2017, by and among the Company, the subsidiary guarantors party thereto and Wilmington Savings Fund Society, FSB, as trustee;

- $1,064 million in outstanding aggregate principal amount of the 5.500% Convertible Senior Notes due 2026 (the "5.500% Convertible Senior Notes"), issued pursuant to the indenture dated October 5, 2016, by and among the Company, the subsidiary guarantors party thereto and Wilmington Savings Fund Society, FSB, as trustee; and

- $2 million in outstanding aggregate principal amount of the 6.875% Senior Notes due 2025 (the "6.875% 2025 Senior Notes" and, collectively with the 6.625% Senior Notes, the 6.875% 2020 Senior Notes, the 6.125% Senior Notes, the 5.375% Senior Notes, the 4.875% Senior Notes, the 5.750% Senior Notes, the 7.000% Senior Notes, the 8.000% 2025 Senior Notes, the 8.000% 2026 Senior Notes, the 7.500% Senior Notes, the 8.000% 2027 Senior Notes and the 5.500% Convertible Senior Notes, the "Unsecured Notes"), issued pursuant to the indenture dated February 1, 2017, by and among the Company, the subsidiary guarantors party thereto and U.S. Bank National Association, as trustee.

In accordance with the Plan, the claims against and interests in the Company were treated as follows:

- each holder of the Second Lien Notes received its *pro rata* share of (i) 12% of the New Common Stock (subject to certain dilutions as described in the Plan), (ii) the non-certificated rights that enable the holders thereof to purchase shares of New Common Stock at an aggregate purchase price of $67.5 million at a price per share of $9.47, (iii) the Class A Warrants, (iv) the Class B Warrants, and (v) 50% of the Class C Warrants; and

- each holder of the Unsecured Notes received its *pro rata* share of (i) 12% of the New Common Stock (subject to certain dilutions as described in the Plan) and (ii) 50% of the Class C Warrants (together with the preceding clause (i), the "Unsecured Claims Recovery")

FLLO Facility

Pursuant to the Plan, on the Effective Date, the term loan agreement, dated as of December 19, 2019, by and among the Company, as borrower, GLAS USA LLC, as administrative agent, and the several lenders from time to time parties thereto (the "FLLO Term Loan Facility") was terminated, and each holder of obligations under the FLLO Term Loan Facility received its *pro rata* share of (i) 76% of the New Common Stock (subject to certain dilutions as described in the Plan) and (ii) the non-certificated rights that enable the holders thereof to purchase shares of New Common Stock at an aggregate purchase price of $382.5 million at a price per share of $9.47.

General Unsecured Claims

Except as otherwise provided in the Plan, all agreements, instruments and other documents evidencing, relating to or otherwise connected with any General Unsecured Claim (as defined in the Plan) outstanding prior to the Effective Date were cancelled and all such interests have no further force or effect after the Effective Date. Pursuant to the Plan, each holder of an allowed General Unsecured Claim will receive its *pro rata* share of the Unsecured Claims Recovery; except that if such holder elected to have its allowed General Unsecured Claim treated as a Convenience Claim (as defined in the Plan), such holder will receive its *pro rata* share of $10,000,000, which *pro rata* share shall not exceed 5 percent of such Convenience Claim.

Prepetition RBL Facility

Pursuant to the Plan, on the Effective Date, the Amended and Restated Credit Agreement, dated as of September 12, 2018 (as amended prior to the date hereof, the "Prepetition RBL Facility"), by and among the Company, as borrower, the several lenders from time to time parties thereto, and MUFG Union Bank, N.A., as administrative agent, was terminated and the holders of obligations under the Prepetition RBL Facility each received, in accordance with such holder's prior determined allocation, either (i) Tranche A Loans or (ii) Tranche B Loans, on a dollar-for-dollar basis. Claims on account of accrued but unpaid Existing RBL Adequate Protection Payments (as defined in the Plan) were paid in full in Cash. On the Effective Date, all liens and security interests granted to secure such obligations were automatically terminated and are of no further force and effect.

Debtor-in-Possession Facility

Pursuant to the Plan, on the Effective Date, the Senior Secured Super-Priority Debtor-in-Possession Credit Agreement, dated as of July 1, 2020, among the Company, as borrower, certain other debtors, as guarantors, MUFG Union Bank, N.A., as the agent, and the several lenders from time to time parties thereto (as amended prior to the date hereof, the "DIP Facility"), was terminated and the holders of obligations under the DIP Facility received payment in full in cash; *provided* that to the extent such lender under the DIP Facility is also a lender under the Exit Revolver, such lender's Allowed DIP Claims (as defined in the Plan) were first reduced dollar-for-dollar and satisfied by the amount of its Exit RBL Loans provided as of the Effective Date. On the Effective Date, all liens and security interests granted to secure such obligations were automatically terminated and are of no further force and effect.

2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The description of the Credit Agreement set forth in Item 1.01 of this Current Report is incorporated herein by reference.

3.02 Unregistered Sales of Equity Securities.

On the Effective Date, pursuant to the Plan and subject to applicable rounding:

- all previously issued and outstanding equity interests in the Company were cancelled;
- 23,022,307 shares of New Common Stock were issued pro rata to holders of the obligations under the FLLO Term Loan Facility;

- (i) 3,635,118 shares of New Common Stock, (ii) 11,111,111 Class A Warrants to purchase 11,111,111 shares of New Common Stock, (iii) 12,345,679 Class B Warrants to purchase 12,345,679 shares of New Common Stock and (iv) 6,858,710 Class C Warrants to purchase 6,858,710 shares of New Common Stock were issued pro rata to holders of the Second Lien Notes;
- (i) 1,311,089 shares of New Common Stock and (ii) 2,473,757 Class C Warrants to purchase 2,473,757 shares of New Common Stock were issued pro rata to holders of the Unsecured Notes;
- (i) 231,112 shares of New Common Stock and (ii) 436,060 Class C Warrants to purchase 436,060 shares of New Common Stock were issued pro rata to holders of General Unsecured Claims;
- 6,337,031 shares of New Common Stock were issued to the Backstop Parties under the Backstop Commitment Agreement (each as defined in the Plan) in respect of the Put Option Premium;
- 442,991 shares of New Common Stock were issued to the Backstop Parties under the Backstop Commitment Agreement in connection with their backstop obligation thereunder to purchase unsubscribed shares of New Common Stock; and
- 62,927,320 shares of New Common Stock were issued to participants in the Rights Offering (as defined in the Plan) extended by the Company to the applicable classes under the Plan (including to the Backstop Parties party to the Backstop Commitment Agreement).

As of the Effective Date, there were 97,906,968 shares of New Common Stock issued and outstanding, subject to applicable rounding, 2,092,917 shares of New Common Stock and 3,948,893 Class C Warrants were reserved for future issuance in respect of claims and interests filed, pending the determination of the allowed portion of any disputed General Unsecured Claims and Unsecured Notes Claims. The Company has reserved (i) 6,800,000 shares of New Common Stock for issuance pursuant to the LTIP (as defined below) and (ii) 37,174,210 shares of New Common Stock for issuance upon exercise of the Warrants.

With the exception of the unsubscribed shares of New Common Stock issued to the Backstop Parties pursuant to the Backstop Commitment Agreement, the New Common Stock and Warrants issued pursuant to the Plan were issued pursuant to the exemption from the registration requirements of the Securities Act of 1933, as amended (the “Securities Act”), under Section 1145 of the Bankruptcy Code. The unsubscribed shares of New Common Stock issued to the Backstop Parties pursuant to the Backstop Commitment Agreement were issued under the exemption from registration requirements of the Securities Act provided by Section 4(a)(2) thereunder.

3.03 Material Modifications to Rights of Security Holders.

As provided in the Plan, all notes, equity, agreements, instruments, certificates and other documents evidencing any claim against or interest in the Debtors were cancelled on the Effective Date and the obligations of the Debtors thereunder or in any way related thereto were fully released. The securities to be cancelled on the Effective Date include all of the equity interests in the Company existing as of the date on which the Debtors commended the Chapter 11 Cases (the “Existing Equity Interests”), the obligations under the FLLO Term Loan Facility, the Second Lien Notes and the Unsecured Notes. For further information, see the Explanatory Note and Items 1.02 and 5.03 of this Current Report, which are incorporated herein by reference.

5.01 Changes in Control of Registrant.

As previously disclosed, on the Effective Date, all of the Existing Equity Interests, the obligations under the FLLO Term Loan Facility, the Second Lien Notes and the Unsecured Notes were cancelled, and the Company issued 76% of the New Common Stock to holders of the obligations under the FLLO Term Loan Facility, 12% of the New Common Stock to the holders of the Second Lien Notes and approximately 12% of the New Common Stock to holders of the Unsecured Notes and General Unsecured Claims pursuant to the Plan. For further information, see Items 1.02, 3.02 and 5.02 of this Current Report, which are incorporated herein by reference.

5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Departure of Directors

As of the Effective Date, the terms of the prior members of the board of directors (the "Board") of Chesapeake expired and the new directors and officers were appointed.

Appointment of Directors

As of the Effective Date, by operation of and in accordance with the Plan:

- The Board consists of seven members;
- Robert D. Lawler, the Company's President and Chief Executive Officer, will continue to serve as a director; and
- Michael Wichterich, Timothy Duncan, Benjamin Duster, IV, Sarah Emerson, Matthew Gallagher and Brian Steck (together with Robert Lawler, the "New Directors") were appointed to the Board.

Successor directors will be elected annually by the holders of the New Common Stock.

The current committees of the Board and directors appointed to each committee are as follows:

- Audit Committee: Benjamin Duster, IV (Chair), Matthew Gallagher and Michael Wichterich.
- Compensation Committee: Brian Steck (Chair), Benjamin Duster, IV and Timothy Duncan.
- Nominating and Governance Committee: Matthew Gallagher (Chair), Sarah Emerson and Michael Wichterich.
- Environmental, Safety & Governance Committee: Sarah Emerson (Chair), Timothy Duncan and Brian Steck.

In connection with their appointment, the New Directors and the New Officers (as defined below) will each enter into an indemnification agreement with the Company providing for indemnification to the fullest extent permitted by law for claims relating to their service to the Company or its subsidiaries. This summary is qualified in its entirety by reference to the full text of the Company's form of indemnification agreement, which is attached hereto as Exhibit 10.6 and incorporated by reference herein.

There is no other arrangement or understanding between the New Directors and any other persons pursuant to which they were appointed as members of the Board. The New Directors do not have any family relationship with any director or executive officer of the Company. There is no relationship between the New Directors and the Company that would require disclosure pursuant to Item 404(a) of Regulation S-K.

Appointment of Officers

On the Effective Date and pursuant to the Plan, Robert D. Lawler was appointed to the position of President and Chief Executive Officer of the Company, Domenic J. Dell'Osso, Jr. was appointed to the position of Executive Vice President and Chief Financial Officer of the Company, Frank J. Patterson was appointed to the position of Executive Vice President – Exploration and Activities, James R. Webb was appointed to the position of Executive Vice President – General Counsel and Corporate Secretary, and William M. Buergler was appointed to the position of Senior Vice President and Chief Accounting Officer of the Company (collectively, the "New Officers"). Each of these individuals served in the same capacity at the Company prior to the Chapter 11 Cases.

Robert D. Lawler has been a director and the President and Chief Executive Officer of Chesapeake Energy Corporation since June 2013. Before joining Chesapeake, Mr. Lawler served in multiple engineering and leadership positions at Anadarko Petroleum Corporation, including as Senior Vice President, International and

Deepwater Operations and member of Anadarko's Executive Committee. Mr. Lawler began his career with Kerr-McGee Corporation in 1988 and joined Anadarko following its acquisition of Kerr-McGee in 2006. Mr. Lawler holds a bachelor's degree in petroleum engineering from the Colorado School of Mines and an M.B.A. from Rice University.

Domenic J. Dell'Osso, Jr. was appointed Executive Vice President and Chief Financial Officer in November 2010. Prior to that time, he served as Vice President – Finance and Chief Financial Officer of Chesapeake's wholly-owned midstream subsidiary Chesapeake Midstream Development, L.P. from August 2008 to November 2010. Before joining Chesapeake, Mr. Dell'Osso was an energy investment banker with Jefferies & Co. from 2006 to 2008 and Banc of America Securities from 2004 to 2006. He graduated from Boston College in 1998 and from the University of Texas at Austin in 2003.

Frank J. Patterson was appointed Executive Vice President – Exploration and Production in August 2016, before that serving as Executive Vice President – Exploration and Northern Division since April 2016 and Executive Vice President – Exploration, Technology & Land from the time he joined Chesapeake in May 2015. Before coming to Chesapeake, Mr. Patterson served in various roles at Anadarko Petroleum Corporation from 2006 to 2015, most recently as Senior Vice President – International Exploration. Prior to that, he was Vice President – Deepwater Exploration at Kerr-McGee and Manager – Geology at Sun E&P/Oryx Energy. Mr. Patterson holds a Bachelor of Science in geology from the University of Oklahoma and serves on the Board of Visitors at the University of Oklahoma's Mewbourne College of Earth and Energy.

James R. Webb was appointed Executive Vice President – General Counsel and Corporate Secretary in January 2014. Mr. Webb joined Chesapeake in October 2012 as Senior Vice President – Legal and General Counsel. Before joining Chesapeake, he worked in private practice with the law firm of McAfee & Taft from February 1995 to October 2012 and practiced with the law firm of Gorsuch Kirgis from 1993 to 1995. Mr. Webb graduated from Austin College in 1989 and from the School of Law at Washington University in St. Louis in 1993.

William M. Buergler was appointed Senior Vice President and Chief Accounting Officer in August 2017. Mr. Buergler joined Chesapeake in 2014 serving as Vice President – Tax. Before joining Chesapeake, he worked for Ernst & Young LLP, where he served as a Partner from 2009 to 2014 and as a Senior Manager from 2002 to 2008, and Arthur Andersen LLP, where he served from 1996 to 2002. Mr. Buergler is a licensed certified public accountant and holds a Bachelor of Science and a Master of Science degree in accounting from Oklahoma State University.

Incentive Plan

Effective as of the Effective Date, the Board adopted the 2021 Long Term Incentive Plan (the "LTIP") with a share reserve equal to 6,800,000 shares of New Common Stock (the "LTIP Pool"). The LTIP provides for the grant of restricted stock units, restricted stock awards, stock options, stock appreciation rights, performance awards and other stock awards to the Company's employees and non-employee directors. The description of the LTIP does not purport to be complete and is qualified in its entirety by reference to the full text of the LTIP, a copy of which is filed herewith as Exhibit 10.7 and is incorporated herein by reference.

Employment Agreements

Each executive officer of the Company has entered into a waiver agreement pursuant to which the executive officer has waived any rights to the acceleration or enhancement of payments (including severance payments), vesting, benefits or other rights under the executive officer's employment agreement upon a termination of employment by the Company without "cause" or resignation by the executive officer for "good reason" within the 24-month period following a change of control resulting from the transactions contemplated by the Plan. Each waiver was executed in accordance with the Plan to ensure the assumption of the executive officer's employment agreement in accordance with the terms of the Plan.

5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On the Effective Date, pursuant to the Plan, the Company filed the Second Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") with the Oklahoma Secretary of State. Also on the

Effective Date, in accordance with the Plan, the Company adopted the Second Amended and Restated Bylaws (the "Bylaws").

Each holder of shares of New Common Stock, as such, shall be entitled to one vote for each share of New Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote.

Subject to the rights of any then-outstanding shares of preferred stock, the holders of New Common Stock may receive such dividends as the Board may declare in its discretion out of legally available funds. Holders of New Common Stock will be entitled to receive all of the remaining assets of the Corporation available for distribution to its shareholders, ratably in proportion to the number of shares of New Common Stock held by them.

Preferred Stock

Shares of preferred stock may be issued in one or more series from time to time, with each such series to consist of such number of shares and to have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, as shall be stated in the resolution or resolutions providing for the issuance of such series adopted by the Board and included in a certificate of designations (hereinafter referred to as the "Certificate of Designation") filed pursuant to the Oklahoma General Corporation Act.

Subject to the rights of the holders of any series of preferred stock pursuant to the terms of the Certificate of Incorporation, the number of authorized shares of preferred stock may be increased or decreased (but not below the number of shares thereof then outstanding) to the extent permitted by the Oklahoma General Corporation Act and the Certificate of Designation.

Anti-Takeover Provisions

Some provisions of Oklahoma law, the Certificate of Incorporation and the Bylaws summarized below could make certain change of control transactions more difficult, including acquisitions of the Company by means of a tender offer, proxy contest or otherwise, as well as removal of the incumbent directors. These provisions may have the effect of preventing changes in management. It is possible that these provisions would make it more difficult to accomplish or deter transactions that a stockholder might consider in his or her best interest, including those attempts that might result in a premium over the market price for the New Common Stock.

Number and Election of Directors

The Bylaws provide that the Board shall be comprised of no less than three and no more than ten directors, with the number of directors to be fixed from time to time by resolution adopted by the Board.

Calling of Special Meeting of Stockholders

The Bylaws provide that special meetings of stockholders may be called only by (i) the chairman of the Board, (ii) the chief executive officer of the Company, (iii) the chief executive officer or the president of the Company, (iv) the Board acting pursuant to a resolution adopted by a majority of the directors of the Board then in office or (v) the secretary of the Company upon the delivery of a written request to the Company by the holders of at least 35% of the voting power of the Company's then outstanding capital stock in the manner provided in the Bylaws.

Amendments to the Bylaws

Subject to certain restrictions set forth in the Certificate of Incorporation, the Bylaws may be amended or repealed or new bylaws may be adopted (i) by action of the Board or (ii) without action of the Board, by the affirmative vote of the holders of a majority of the voting power of all outstanding shares of New Common Stock entitled to vote generally in the election of directors.

Other Limitations on Stockholder Actions

Advance notice is required for stockholders to nominate directors or to submit proposals for consideration at meetings of stockholders. These procedures provide that notice of stockholder proposals must be timely given in writing to the corporate secretary prior to the meeting at which the action is to be taken. Generally, to be timely, notice must be received at the principal executive offices not less than 90 days nor more than 120 days prior to the anniversary of the immediately preceding annual meeting of stockholders. The Bylaws specify in detail the requirements as to form and content of all stockholder notices. These requirements may preclude stockholders from bringing matters before the stockholders at an annual or special meeting. The Bylaws also describe certain criteria for when stockholder-requested meetings need not be held.

Directors may be removed from office at any time by the affirmative vote of holders of at least a majority of the outstanding shares of New Common Stock entitled generally to vote in the election of directors.

Newly Created Directorships and Vacancies on the Board

Under the Bylaws, any newly created directorships resulting from any increase in the number of directors and any vacancies on the Board for any reason may be filled by a majority vote of the directors then in office, even if less than a quorum, and the directors so chosen shall hold office until the next annual meeting of shareholders and until his or her successor is duly elected and qualified, or until his or her earlier resignation or removal.

Authorized but Unissued Shares

The Company's authorized but unissued shares of New Common Stock are available for future issuance. The Company may use these additional shares of New Common Stock for a variety of corporate purposes, including future public offerings to raise additional capital, acquisitions and employee benefit plans. The existence of authorized but unissued shares of New Common Stock could render more difficult or discourage an attempt to obtain control of the Company by means of a proxy contest, tender offer, merger or otherwise.

Exclusive Forum

The Certificate of Incorporation provides that, unless the Company consents in writing to the selection of an alternative forum, the state courts within the State of Oklahoma (or, if no such state court has jurisdiction, the United States District Court for the Western District of Oklahoma) will be the sole and exclusive forum for (i) any derivative action or proceeding brought on the Company's behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former directors, officers, other employees or stockholders to the Company or to the stockholders, (iii) any action asserting a claim arising pursuant to any provision of the Oklahoma General Corporation Act, the Certificate of Incorporation or the Bylaws (as each may be amended from time to time), or (iv) any action asserting a claim related to or involving the Company that is governed by the internal affairs doctrine.

The foregoing descriptions of the Certificate of Incorporation and Bylaws do not purport to be complete and are qualified in their entirety by reference to the Certificate of Incorporation and Bylaws, copies of which are attached hereto as Exhibits 3.1 and 3.2 and incorporated herein by reference.

Elimination of Shareholders Rights Plan

In connection with the adoption of the Rights Agreement, on April 23, 2020, the Company filed a Certificate of Designations of Series B Preferred Stock with the Secretary of State of the State of Oklahoma setting forth the rights, powers, and preferences of the Series B Preferred Stock issuable upon exercise of the Rights (the "Preferred Shares"). On the Effective Date, the Company filed a Certificate of Elimination (the "Certificate of Elimination") with the Secretary of State of the State of Oklahoma eliminating the Preferred Shares and returning them to authorized but undesignated shares of the Company's preferred stock.

The foregoing is a summary of the terms of the Certificate of Elimination. The summary does not purport to be complete and is qualified in its entirety by reference to the Certificate of Elimination, a copy of which is attached as Exhibit 3.3 hereto and incorporated herein by reference.

7.01 Regulation FD Disclosure.

On February 9, 2021, the Company issued a press release announcing the consummation of the Plan and emergence from the Chapter 11 Cases on the Effective Date as disclosed herein, a copy of which is furnished as Exhibit 99.2 hereto.

The information contained in this Item 7.01 and the exhibit hereto shall not be deemed to be "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and shall not be incorporated by reference into any filings made by the Company under the Securities Act or the Exchange Act, except as may be expressly set forth by specific reference in such filing.

Forward-Looking Statements

This Current Report on Form 8-K includes "forward-looking statements" within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act. Forward looking statements are statements other than statements of historical fact. They are generally identified by the words the words "believe," "expect," "anticipate," "estimate," "intend," "plan," "may," "should," "could," "will," "would," and "will be," and variations of such words and similar expressions, although not all forward-looking statements contain these identifying words. They include statements regarding our current expectations or forecasts of future events, including matters relating to the continuing effects of the COVID-19 pandemic and the impact thereof on our business, financial condition and results of operations; actions by, or disputes among or between, members of OPEC+; market factors, market prices; our ability to meet debt service requirements; our expectations regarding the borrowing base under our revolving credit facility; our evaluation of strategic alternatives, cost-cutting measures, reductions in capital expenditures, refinancing transactions, capital exchange transactions, asset divestitures, operational efficiencies, future impairments, cost savings due to operational and capital efficiencies related to the WildHorse Merger; the operation or effects of the Section 382 Rights Plan and the use of net operating losses to offset future taxable income. Such forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially from those expressed in, or implied by, such statements. Although we believe the expectations and forecasts reflected in the forward-looking statements are reasonable, we can give no assurance they will prove to have been correct. They can be affected by inaccurate or changed assumptions or by known or unknown risks and uncertainties. These risks and uncertainties include, but are not limited to: the impact of the COVID-19 pandemic and its effect on our business, financial condition, employees, contractors, vendors and the global demand for oil and natural gas and U.S. and world financial markets; the effects of the Chapter 11 Cases on the Company's liquidity or results of operations or business prospects; the effects of the Chapter 11 Cases on the Company's business and the interests of various constituents; the Company's ability to comply with the covenants under our revolving credit facility and other indebtedness and the related impact on our ability to continue as a going concern; the volatility of oil, natural gas and NGL prices, which are affected by general economic and business conditions, as well as increased demand for (and availability of) alternative fuels and electric vehicles; uncertainties inherent in estimating quantities of oil, natural gas and NGL reserves and projecting future rates of production and the amount and timing of development expenditures; the Company's ability to replace reserves and sustain production; drilling and operating risks and resulting liabilities; the Company's ability to generate profits or achieve targeted results in drilling and well operations; the limitations the Company's level of indebtedness may have on our financial flexibility; the Company's inability to access the capital markets on favorable terms; the availability of cash flows from operations and other funds to finance reserve replacement costs or satisfy the Company's debt obligations; adverse developments or losses from pending or future litigation and regulatory proceedings, including royalty claims; legislative and regulatory initiatives addressing environmental concerns, including initiatives addressing the impact of global climate change or further regulating hydraulic fracturing, methane emissions, flaring or water disposal; terrorist activities and/or cyber-attacks adversely impacting the Company's operations; effects of acquisitions and dispositions, including the Company's acquisition of WildHorse and its ability to realize related synergies and cost savings; effects of purchase price adjustments and indemnity obligations; and other important risks, assumptions and other important factors that could cause actual results to differ materially from those expressed in the forward-looking statements and which are described under "Risk Factors" in Item 1A of Chesapeake's Annual Report on Form 10-K for the fiscal year ended December 31, 2019 and any updates to those factors set forth in Chesapeake's subsequent quarterly reports on Form 10-Q or current reports on Form 8-K. Chesapeake undertakes no obligation to release publicly any revisions to any forward looking statements, to report events or to report the occurrence of unanticipated events.

9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit	Description
2.1	Fifth Amended Joint Plan of Reorganization of Chesapeake Energy Corporation and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code (incorporated by reference to Exhibit A of the Confirmation Order attached as Exhibit 99.1 hereto, filed as Exhibit 2.1 to the Company's Current Report on Form 8-K filed on January 16, 2021).
3.1	Second Amended and Restated Certificate of Incorporation of Chesapeake Energy Corporation.
3.2	Second Amended and Restated Bylaws of Chesapeake Energy Corporation.
3.3	Certificate of Elimination of Series B Preferred Stock of Chesapeake Energy Corporation, dated April 23, 2020 (incorporated by reference to Exhibit 3.1 to Chesapeake Energy Corporation's Current Report on Form 8-K filed on April 23, 2020).
10.1	Credit Agreement, dated as of February 9, 2021, among Chesapeake Energy Corporation, as borrower, MUFG Union Bank, N.A., as administrative agent, and the lenders and other parties thereto.
10.2	Registration Rights Agreement, dated as of February 9, 2021, by and among Chesapeake Energy Corporation and the other parties signatory thereto.
10.3	Class A Warrant Agreement, dated as of February 9, 2021, between Chesapeake Energy Corporation and Equiniti Trust Company.
10.4	Class B Warrant Agreement, dated as of February 9, 2021, between Chesapeake Energy Corporation and Equiniti Trust Company.
10.5	Class C Warrant Agreement, dated as of February 9, 2021, between Chesapeake Energy Corporation and Equiniti Trust Company.
10.6	Form of Indemnity Agreement.
10.7	Chesapeake Energy Corporation 2021 Long Term Incentive Plan.
99.1	Order Confirming Fifth Amended Joint Plan of Reorganization (incorporated by reference to Exhibit 2.1 to Chesapeake Energy Corporation's Current Report on Form 8-K filed on January 16, 2021).
99.2	Press Release dated February 9, 2021.
104	Cover Page Interactive Data File - The cover page XBRL tags are embedded within the inline XBRL document.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

CHESAPEAKE ENERGY CORPORATION

By: /s/ JAMES R. WEBB

James R. Webb

Executive Vice President — General Counsel and Corporate Secretary

Date: February 9, 2021

SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF CHESAPEAKE ENERGY CORPORATION

The undersigned, James R. Webb, hereby certifies that:

A. The name of the corporation is Chesapeake Energy Corporation (the "***Corporation***").

B. He is the duly elected and acting Executive Vice President - General Counsel and Corporate Secretary of the Corporation.

C. The Corporation was incorporated on November 19, 1996, under the name "Chesapeake Oklahoma Corporation" upon the filing with the Secretary of State of Oklahoma of its original Certificate of Incorporation (the "***Original Certificate of Incorporation***").

D. The Original Certificate of Incorporation was amended and restated by the Restated Certificate of Incorporation filed with the Secretary of State of Oklahoma on February 26, 2019, with an amendment thereto filed on April 13, 2020 (as amended, the "***Restated Certificate***").

E. This Second Amended and Restated Certificate of Incorporation (the "***Certificate of Incorporation***") was duly adopted in accordance with the provisions of Sections 1077 and 1118(A) of the Oklahoma General Corporation Act (the "***Act***") in accordance with that certain Joint Chapter 11 Plan of Reorganization of Chesapeake Energy Corporation and its debtor affiliates approved by order of the United States Bankruptcy Court for the Southern District of Texas in *In re: Chesapeake Energy Corporation, et al.*, Case No. 20-33233, under Chapter 11 of the United States Bankruptcy Code (the "***Bankruptcy Code***") (11 U.S.C. §§ 101-1330), as amended.

F. The text of the Restated Certificate of Incorporation of the Corporation is hereby amended and restated in its entirety to read as follows:

ARTICLE I
NAME

The name of the Corporation is Chesapeake Energy Corporation.

ARTICLE II
REGISTERED OFFICE AND AGENT

The address of the Corporation's registered office in the State of Oklahoma is 1833 South Morgan Road, Oklahoma City, Oklahoma 73128. The Corporation's registered agent at such address is The Corporation Company.

ARTICLE III
PURPOSES

The nature of the business and the purpose of the Corporation shall be to engage in any lawful act or activity and to pursue any lawful purpose for which a corporation may be formed under the Act. The Corporation is authorized to exercise and enjoy all powers, rights and privileges which corporations organized under the Act may have as in force from time to time, including, without limitation, all powers, rights and privileges necessary or convenient to carry out the purposes of the Corporation.

ARTICLE IV
CAPITAL STOCK

The total number of shares of capital stock which the Corporation shall have authority to issue is 495,000,000 shares consisting of 45,000,000 shares of Preferred Stock, par value $0.01 per share (the "***Preferred Stock***"), and 450,000,000 shares of Common Stock, par value $0.01 per share (the "***Common Stock***"). The preferences, qualifications, limitations, restrictions and the special or relative rights in respect of the shares of each class are as follows:

1. *Preferred Stock.* The Preferred Stock may be issued from time to time in one or more series. All shares of Preferred Stock shall be of equal rank and shall be identical, except in respect of the matters that may be fixed and determined by the Board of Directors as hereinafter provided by resolution or resolutions from time to time for the issuance of shares of Preferred Stock in one or more series, and each share of each series shall be identical with all other shares of such series, except as to the date from which dividends are cumulative. The Board of Directors hereby is authorized, without any action or vote by the Corporation's shareholders (except as may otherwise be provided by the terms of any class or series of Preferred Stock then outstanding) to cause such shares to be issued in one or more series and with respect to each such series prior to the issuance thereof to fix and determine the designation, powers, preferences and relative, participating, optional or other special rights of the shares of each such series and the qualifications, limitations or restrictions, if any, thereof, by filing one or more certificates pursuant to the Act (hereinafter, referred to as a "***Certificate of Designation***"), and to increase or decrease the number of shares of any such series to the extent permitted by the Act and the Certificate of Designation (but not below the number of shares then outstanding).

The authority of the Board of Directors with respect to each series shall include, but not be limited to, determination of the following:

(a) The number of shares constituting a series, the distinctive designation of a series, which may be made by distinguishing the number, letter or title of such series, and the price or other consideration for which shares of the series shall be issued and, if deemed desirable, the stated value or other valuation of the series, if different from the par value;

(b) Whether the shares of a series are entitled to any fixed or determinable dividends, the dividend rate (if any) on the shares and when such dividends shall be payable, whether the dividends shall be paid in cash, stock or otherwise, whether the dividends are cumulative (and, if so, from which date or dates for each such series) and the relative rights of priority, the preference or relation of dividends on shares of that series;

(c) Whether a series has voting rights in addition to the voting rights provided by law and the terms and conditions of such voting rights, whether with respect to the election of directors or otherwise;

(d) Whether a series will have or receive conversion or exchange privileges and the terms and conditions of such conversion or exchange privileges, including whether the shares of the series shall be convertible into or exchangeable for shares of any other class or series of capital stock, or any other security, of the Corporation or any other corporation and, if so, the specification of such other class or series or such other security, the conversion or exchange price or prices or rate or rates, any adjustments thereof, the date or dates at which such shares shall be convertible or exchangeable and all other terms and conditions upon which such conversion or exchange may be made;

(e) Whether or not the shares of a series are redeemable and the terms and conditions of such redemption, including, without limitation, the manner of selecting shares for redemption if less than all shares are to be redeemed, the date or dates on or after which the shares in the series will be redeemable and the amount payable in case of redemption;

(f) Whether a series will have a sinking fund for the redemption or purchase of the shares in the series and the terms and the amount of such sinking fund;

(g) The right of a series to the benefit of conditions and restrictions on the creation of indebtedness of the Corporation or any subsidiary; on the issuance of any additional capital stock (including additional shares of such series or any other series), on the payment of dividends or the making of other distributions on any outstanding stock of the Corporation and the purchase, redemption or other acquisition by the Corporation, or any subsidiary, of any outstanding stock of the Corporation;

(h) The rights of a series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Corporation and the relative rights of priority of payment of a series; and

(i) Any other relative, participating, optional or other special rights, qualifications, limitations or restrictions of such series.

Dividends on outstanding shares of Preferred Stock shall be paid or set apart for payment before any dividends shall be paid or declared or set apart for payment on the shares of Common Stock with respect to the same dividend period.

If upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation the assets available for distribution to holders of shares of Preferred Stock of all series shall be insufficient to pay such holders the full preferential amount to which they are entitled, then such assets shall be distributed ratably among the shares of all series in accordance with the respective preferential amounts (including unpaid cumulative dividends, if any) payable with respect thereto.

2. *Common Stock.* The Common Stock shall be subject to the express terms of the Preferred Stock and any series thereof. Each share of Common Stock shall be equal to every other share of Common Stock. The holders of shares of Common Stock shall be entitled to one

vote for each share of such stock held by such holder in his or her name on the books of the Corporation upon all matters presented to the shareholders. Shares of Common Stock authorized hereby shall not be subject to preemptive rights. The holders of shares of Common Stock now or hereafter outstanding shall not have any preferential, preemptive or other right to subscribe for or to purchase from the Corporation any stock of the Corporation of any class whether or not now authorized, or to purchase any bonds, evidence of indebtedness, debentures, notes, obligations or other securities which the Corporation may at any time issue, whether or not the same shall be convertible into stock of the Corporation of any class or shall entitle the owner or holder to purchase stock of the Corporation of any class.

Subject to the preferential and other dividend rights applicable to the Preferred Stock, the holders of shares of Common Stock shall be entitled to receive such dividends (payable in cash, stock or otherwise) as may be declared on the Common Stock by the Board of Directors at any time or from time to time out of any funds legally available therefor, and any dividend or distribution on Common Stock shall be payable on shares of Common Stock ratably.

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after distribution in full of the preferential and/or other amounts, if any, to be distributed to the holders of shares of Preferred Stock, the holders of shares of Common Stock shall be entitled to receive all of the remaining assets of the Corporation available for distribution to its shareholders, ratably in proportion to the number of shares of Common Stock held by them. A liquidation, dissolution, or winding-up of the Corporation, as such terms are used in this paragraph, shall not be deemed to be occasioned by or to include any consolidation or merger of the Corporation with or into any other corporation or corporations or other entity or a sale, lease, exchange, or conveyance of all or a part of the assets of the Corporation.

3. *Non-Voting Equity.* The Corporation shall not issue nonvoting equity securities to the extent prohibited by Section 1123(a)(6) of the Bankruptcy Code; provided, however, that the foregoing restriction shall (a) have no further force and effect beyond that required under Section 1123(a)(6) of the Bankruptcy Code, (b) only have such force and effect for so long as Section 1123(a)(6) of the Bankruptcy Code is in effect and applicable to the Corporation and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

4. *Hart-Scott-Rodino Act.* Notwithstanding any provision herein to the contrary, in connection with any acquisition of the Common Stock (and/or any other voting securities of the Corporation) as to which the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), would, but for this paragraph, be applicable, any person or entity (as defined under the HSR Act) acquiring the Common Stock (and/or other voting securities of the Corporation) shall have no right to vote such Common Stock or voting securities with respect to the election of directors until such person or entity has complied with the filing and waiting period requirements of the HSR Act; provided that the person or entity acquiring such Common Stock or voting securities shall be entitled to vote on all other matter submitted to a vote of the shareholders of the Corporation.

5. The number of authorized shares of any class or classes of capital stock of the Corporation may be increased or decreased, but not below the number of shares thereof then

outstanding, by the affirmative vote of the holders of a majority of the capital stock of the Corporation entitled to vote irrespective of the provisions of Section 1077(B)(2) of the Act.

ARTICLE V
LIMITATION OF DIRECTOR LIABILITY

A director of the Corporation shall not be personally liable to the Corporation or its shareholders for damages for breach of fiduciary duty as a director, except for personal liability for: (a) acts or omissions by such director not in good faith or which involve intentional misconduct or a knowing violation of law; (b) the payment of dividends or the redemption or purchase of stock in violation of Section 1053 of the Act; (c) any breach of such director's duty of loyalty to the Corporation or its shareholders; or (d) any transaction from which such director derived an improper personal benefit. If the Act is amended to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the Corporation, in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by the amended Act. Any repeal or modification of this Article V by the shareholders of the Corporation shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE VI
BOARD OF DIRECTORS

1. *Management by Board of Directors*. The business and affairs of the Corporation shall be under the direction of the Board of Directors.

2. *Number of Directors.* Subject to the addition of any directors elected by a class of Preferred Stock as provided in Section 3 of this Article VI, the number of directors which shall constitute the whole Board of Directors shall be determined by resolution adopted by a vote of a majority of the entire Board of Directors, or at an annual or special meeting of shareholders by the affirmative vote of at least a majority of the outstanding stock entitled to vote. No reduction in number shall have the effect of removing any director prior to the expiration of his term.

3. *Election of Directors by Shareholders; Vacancies*. All directors of the Corporation shall be elected annually. Each director shall hold office for a term ending at the next succeeding annual meeting until his or her successor shall be duly elected and qualified, subject, however, to prior death, resignation, retirement, disqualification or removal from office. Newly created directorships resulting from an increase in the authorized number of directors, or any other vacancy on the Board of Directors, however resulting, may be filled by a majority of the directors then in office, even if less than a quorum, by a sole remaining director or by the shareholders in accordance with this Certificate of Incorporation, any Certificate of Designation, the Bylaws of the Corporation (the "***Bylaws***") and the Act. Any director elected or appointed to fill a vacancy shall hold office for a term to expire at the next annual meeting of shareholders following such director's election or appointment. No reduction of the number of directorships shall remove or shorten the term of any director in office. No election of directors need be by written ballot. Cumulative voting for the election of directors is not permitted.

Notwithstanding the foregoing, whenever the holders of any one or more classes or series of Preferred Stock issued by the Corporation shall have the right, voting separately by class or series, to elect directors at an annual or special meeting of shareholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of the Certificate of Designation attributable to such Preferred Stock or the resolution or resolutions adopted by the Board of Directors pursuant to Section 2 of this Article VI applicable thereto. Advance notice of shareholder nominations for the election of directors and of business to be brought by shareholders before any meeting of the shareholders of the Corporation shall be given in the manner provided in the Bylaws.

Unless otherwise required by law, special meetings of the shareholders may be called only by the Chairman of the Board of Directors, the Chief Executive Officer or the President or by the Board of Directors acting pursuant to a resolution adopted by a majority of the Board of Directors, or by the Secretary at the written request or requests of the holders of record of at least 35% of the voting power of the Corporation's then outstanding capital stock entitled to vote at the time of such written request pursuant to the procedures set forth in the Bylaws. At a special meeting of the shareholders, no business shall be transacted and no corporate action shall be taken other than as stated in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors. If requested by a requisite percentage of the holders of the Corporation's capital stock to be included at a special meeting of the shareholders, the business to be transacted at such meeting will include the nomination and election of directors, subject to the procedures set forth in the Bylaws.

4. *Qualifications*. A Director need not be a shareholder of the Corporation or a resident of the State of Oklahoma.

ARTICLE VII
INDEMNIFICATION

1. *General*. The Corporation shall indemnify, to the fullest extent permitted by the laws of the State of Oklahoma from time to time in effect, each director and officer of the Corporation, and may indemnify each employee and agent of the Corporation, and all other persons whom the Corporation is authorized to indemnify under the provisions of the Act and in accordance with the Bylaws. The right to indemnification conferred in this Article VII shall also include the right to be paid by the Corporation the expenses incurred in connection with any such proceeding in advance of its final disposition to the fullest extent authorized by the laws of the State of Oklahoma from time to time in effect. The right to indemnification conferred by this Article VII shall be a contract right. The Corporation may, by action of its Board of Directors, provide indemnification to such of the employees and agents of the Corporation to such extent and to such effect as the Board of Directors shall determine to be appropriate and authorized by the Act.

2. *Insurance*. The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss incurred by such person in any such capacity or arising out of such person's

status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the Act.

3. *Nonexclusivity of Rights*. The rights and authority conferred in this Article VII shall not be exclusive of any other right that any person may otherwise have or hereafter acquire.

4. *Preservation of Rights*. Neither the amendment nor repeal of this Article VII, nor the adoption of any provision of this Certificate of Incorporation or the Bylaws, nor, to the fullest extent permitted by the Act, any modification of law, shall adversely affect any right or protection of any person granted pursuant hereto existing at, or arising out of or related to any event, act or omission that occurred prior to, the time of such amendment, repeal, adoption or modification (regardless of when any proceeding (or part thereof) relating to such event, act or omission arises or is first threatened, commenced or completed).

ARTICLE VIII
FORUM SELECTION

1. *Exclusive Forum.*

(a) Unless the Corporation consents in writing to the selection of an alternative forum, the state courts located within the State of Oklahoma (or, if no such state court has jurisdiction, the United States District Court for the Western District of Oklahoma) shall be the sole and exclusive forum for: (i) any derivative action or proceeding brought on behalf of the Corporation; (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director or officer or other employee of the Corporation to the Corporation or the Corporation's shareholders; (iii) any action asserting a claim against the Corporation or any current or former director or officer or other employee of the Corporation arising pursuant to any provision of the Act or this Certificate of Incorporation or the Bylaws (as either may be amended from time to time); or (iv) any action asserting a claim related to or involving the Corporation that is governed by the internal affairs doctrine. Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended.

(b) To the fullest extent permitted by applicable law, any person or entity purchasing or otherwise acquiring or holding any interest in any security of the Corporation shall be deemed to have notice of and consented to this Article VIII.

ARTICLE IX
AMENDMENT TO CERTIFICATE OF INCORPORATION

The Corporation shall have the right, subject to any express provisions or restrictions contained in this Certificate of Incorporation or the Bylaws, from time to time, to amend this Certificate of Incorporation or any provision hereof in any manner now or hereafter provided by law; and all rights and powers of any kind conferred upon a director or shareholder of the Corporation by this Certificate of Incorporation or any amendment hereof are subject to such right of the Corporation; *provided, however*, the affirmative vote of the holders of at least sixty percent (60%) of the voting power of all outstanding stock entitled to vote, voting together as a

single class, shall be required to amend, repeal, or adopt any provision inconsistent with this Article IX, Article V, Article VI, Article VII, Article VIII, Article X or Article XI of this Certificate of Incorporation; *provided further*, that any amendment that would materially and adversely affect the rights hereunder of any holder of Common Stock in a facially disproportionate manner (relative to other holders of Common Stock) will require the consent of such holder.

ARTICLE X
BYLAWS; CONTROL SHARES ACT; BUSINESS COMBINATIONS;
NO WRITTEN CONSENT; MISCELLANEOUS

1. *Bylaws*. The Bylaws may be adopted, repealed, altered, amended or rescinded by either (a) the Board of Directors or (b) the affirmative vote of the holders of at least a majority of the outstanding stock of the Corporation entitled to vote thereon (a "***Shareholder Adopted Bylaw***"); provided, however that Section 5.8, Section 5.9 and Article VII of the Bylaws of may not be amended by the Board or by a Shareholder Adopted Bylaw without the approval of sixty percent (60%) of the voting power of the Corporation's then outstanding capital stock entitled to vote at an election of directors. In addition, any Shareholder Adopted Bylaw that is approved by sixty percent (60%) or more of the voting power of the Corporation's then outstanding capital stock entitled to vote at an election of directors (a "***Supermajority Bylaw***") may only be amended, altered or repealed by the affirmative vote of holders of at least sixty percent (60%) of the voting power of the Corporation's then outstanding capital stock entitled to vote at an election of directors, and the Board may not adopt any new Bylaw, or amend, alter or repeal any existing Bylaw, if such adoption, amendment, alteration or repeal would be directly contrary to a Supermajority Bylaw.

2. *Control Shares Act*. The Corporation elects not to be governed by the Oklahoma Control Shares Act as codified at Sections 1145 through 1155 of the Act. This election shall be effective on the date of filing this Certificate of Incorporation.

3. *Business Combinations*. The Corporation elects not to be governed by Section 1090.3 of the Act. This election shall be effective on the date of filing this Certificate of Incorporation.

4. *No Action by Written Consent*. Subject to the rights of the holders of any class or series of Preferred Stock then outstanding, as may be set forth in the resolution or resolutions adopted by the Board of Directors pursuant to Article IV hereto for such class or series of Preferred Stock, any action required or permitted to be taken at any annual or special meeting of shareholders may be taken only upon the vote of shareholders at an annual or special meeting duly noticed and called in accordance with the Act, this Certificate of Incorporation and the Bylaws and may not be taken by written consent of shareholders without a meeting.

5. *Existence*. The Corporation shall have perpetual existence.

6. *Corporate Books*. The shareholders and the Board of Directors shall have the power to keep the books, documents and papers of the Corporation outside of the State of Oklahoma, except as otherwise required by the laws of the State of Oklahoma. The Board of Directors from time to time shall determine whether and to what extent and at what times and

places, and under what conditions and regulations the accounts and books of the Corporation, or any of them, shall be open to the inspection of the shareholders, and no shareholders shall have any right to inspect any account, book or documents of the Corporation except as conferred by statute or as authorized by resolution of the Board of Directors.

ARTICLE XI
CORPORATE OPPORTUNITIES

In anticipation that the Corporation and certain of its non-employee directors (the "**Non-Employee Directors**") may engage in, and are permitted to have, investments or other business relationships, ventures, agreements or arrangements with entities engaged in the same or similar activities or lines of business, and in recognition of (a) the benefits to be derived by the Corporation through the continued service of such Non-Employee Directors and (b) the difficulties attendant to any Non-Employee Director, who desires and endeavors fully to satisfy such Non-Employee Director's fiduciary duties, in determining the full scope of such duties in any particular situation, the provisions of this Article XI are set forth to regulate, define and guide the conduct of certain affairs of the Corporation as they may involve such Non-Employee Directors, and the powers, rights, duties and liabilities of the Corporation and its Non-Employee Directors, other directors and officers, and shareholders in connection therewith.

The Corporation's Non-Employee Directors shall not have a duty to refrain from engaging directly or indirectly in the same or similar business activities or lines of business as the Corporation or its affiliates or otherwise competing with the Corporation or its affiliates, and, to the fullest extent permitted by applicable law, Non-Employee Directors of the Corporation shall not be liable to the Corporation or its shareholders for breach of any fiduciary duty by reason of any such activities. The Corporation hereby renounces any interest or expectancy in, or right to be offered an opportunity to participate in, any business opportunity that may be a corporate opportunity for a Non-Employee Director to the fullest extent permitted by applicable law. If a Non-Employee Director acquires knowledge of a potential transaction or matter that may be a corporate opportunity for the Corporation, such Non-Employee Director shall have no duty to communicate or offer such corporate opportunity to the Corporation and shall not be liable to the Corporation or its shareholders for breach of any fiduciary duty by reason of the fact that such corporate opportunity is not communicated or offered to the Corporation. Notwithstanding the foregoing, (a) the Corporation does not renounce its interest in any corporate opportunity offered to any Non-Employee Director if such opportunity is expressly offered solely to such Non-Employee Director in his or her capacity as a director of the Corporation, and this Article XI shall not apply to any such corporate opportunity; and (b) a corporate opportunity shall not be deemed to be a potential corporate opportunity for the Corporation if it is a business opportunity (i) that the Corporation is neither financially or legally able, nor contractually permitted to undertake, (ii) that from its nature, is not in the line of the Corporation's business or is of no practical advantage to the Corporation or (iii) in which the Corporation has no interest or reasonable expectancy.

None of the alteration, amendment, change and repeal of any provision of this Article XI nor the adoption of any provision of this Certificate of Incorporation inconsistent with any provision of this Article XI shall eliminate or reduce the effect of this Article XI in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article XI, would accrue or arise, prior to such alteration, amendment, repeal or adoption.

Any person or entity purchasing or otherwise acquiring any interest in any shares of capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article XI.

[signature page follows]

This Second Amended and Restated Certificate of Incorporation has been duly adopted by the Corporation's Board of Directors, and is executed by the Executive Vice President - General Counsel and Corporate Secretary of the Corporation this 9th day of February, 2021.

CHESAPEAKE ENERGY CORPORATION, an Oklahoma corporation

By: /s/ James R. Webb

James R. Webb, Executive Vice President - General Counsel & Corporate Secretary

ATTEST:

/s/ J. David Hershberger

J. David Hershberger, Assistant Corporate Secretary

[Signature Page to Second Amended and Restated Certificate of Incorporation]

Exhibit 3.2

SECOND AMENDED AND RESTATED BYLAWS

OF

CHESAPEAKE ENERGY CORPORATION

(an Oklahoma corporation)

(dated February 9, 2021)

TABLE OF CONTENTS

BYLAWS

OF

CHESAPEAKE ENERGY CORPORATION

(an Oklahoma corporation)

ARTICLE I
Shareholders' Meetings

Section 1.1 Place of Meetings. Meetings of shareholders for all purposes may be held at such time and place, either within or without the State of Oklahoma, or by means of remote communication in the manner provided by statute as the board of directors in its sole discretion may determine, as shall be stated in Chesapeake Energy Corporation's (the "Corporation") the notice of the meeting (or any supplement thereto).

Section 1.2 Annual Meeting. The annual meeting of shareholders for the election of directors and the transaction of such other business as may properly come before the meeting in accordance with these Bylaws shall be held at such time, date and place as shall be determined by the board of directors in its sole discretion. The board of directors may postpone, reschedule or cancel any annual meeting of shareholders.

Section 1.3 Special Meetings.

(a) Unless otherwise required by law, special meetings of the shareholders may be called only by the chairman of the board of directors, the chief executive officer or the president or by the board of directors acting pursuant to a resolution adopted by a majority of the board of directors then in office, or by the secretary at the written request or requests (each, a "Special Meeting Request" and, collectively, the "Special Meeting Requests") of holders of record of at least 35% of the voting power of the Corporation's then outstanding capital stock entitled to vote on the matter or matters to be brought before the special meeting of the shareholders (the "Requisite Percentage"). At a special meeting of the shareholders, no business shall be transacted and no corporate action shall be taken other than as stated in the notice of meeting (or any supplement thereto) given by or at the direction of the board of directors.

(b) A Special Meeting Request to the secretary shall be signed and dated by each shareholder of record (or a duly authorized agent of such shareholder) requesting the special meeting of the shareholders (each, a "Requesting Shareholder"), shall comply with this Section 1.3, and shall include (i) a statement of the specific purpose or purposes of the Special Meeting, (ii) the information required by Section 1.11(c)(i) and (iii) if the Special Meeting Request relates to the nomination of persons for election to the board of directors of the Company, the information required by Section 1.11(c)(ii). A special meeting requested by shareholders shall be held on such place, date and at such time as may be fixed by the board of directors in accordance with these Bylaws; provided, that the date of a special meeting of the shareholders shall not be less than thirty (30) days or more than seventy-five (75) days after receipt by the secretary of the Special Meeting Request(s) of the holders of the Requisite Percentage that satisfy the requirements of this Section 1.3.

(c) Notwithstanding the foregoing provisions of this Section 1.3, a special meeting requested by shareholders shall not be held if (i) the Special Meeting Request does not comply with this Section 1.3, (ii) the Special Meeting Request relates to an item of business that is not a proper subject for shareholder action under applicable law or (iii) the board of directors has called or calls for an annual or special meeting of the shareholders to be held within ninety (90) days after the Special Meeting Request is received by the secretary and the business to be conducted at such meeting includes the nomination or election of directors or another identical or substantially similar item of business. The board of directors shall determine in good faith whether the requirements set forth in this Section 1.3(c) have been satisfied and, if satisfied, will include the requested items of business in the Corporation's notice of the meeting, including the election of directors if requested.

(d) In determining whether a special meeting of the shareholders has been requested by the record holders of shares representing in the aggregate at least the Requisite Percentage, multiple Special Meeting Requests delivered to the secretary will be considered together only if (i) each Special Meeting Request identifies substantially the same purpose or purposes of the special meeting and substantially the same matters proposed to be acted on at the special meeting (in each case as determined in good faith by the board of directors) and (ii) such Special Meeting Requests have been dated and delivered to the secretary within twenty (20) days of the earliest dated Special Meeting Request. A Requesting Shareholder may revoke a Special Meeting Request at any time by written revocation delivered to the secretary and if, following such revocation, there are outstanding un-revoked requests from Requesting Shareholders holding less than the Requisite Percentage, the board of directors may, in its discretion, cancel the special meeting of the shareholders. If none of the Requesting Shareholders appears or sends a duly authorized agent to present the business to be presented for consideration that was specified in the Special Meeting Request, the Corporation need not present such business for a vote at such special meeting of the shareholders.

(e) Nominations of persons for election to the board of directors of the Corporation at a special meeting of shareholders may be made by shareholders only (i) in accordance with this Section 1.3 or (ii) if the election of directors is included as business to be brought before a special meeting of the shareholders in the Corporation's notice of meeting, then only by any shareholder of the Corporation who is a shareholder of record at the time of giving of notice provided for in this Section 1.3(a) at the time of the special meeting, who shall be entitled to vote at the meeting and who complies with the procedures set forth in this Section 1.3(e). For nominations to be properly brought by a shareholder before a special meeting of shareholders pursuant to this Section 1.3(e), the shareholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a shareholder's notice shall be delivered to or mailed and received at the principal executive offices of the Corporation (A) not earlier than 120 days prior to the date of the special meeting nor (B) later than the later of 90 days prior to the date of the special meeting or the 10th day following the day on which public announcement of the date of the special meeting was first made.

Section 1.4 Notice of Meetings. Unless otherwise provided in the Oklahoma General Corporation Act (the "Act"), written notice of every meeting of shareholders stating the place, if any, date, hour, the means of remote communications, if any, by which shareholders and proxyholders may be deemed to be present in person and vote at such meeting and, in the case of a special meeting, purposes thereof, shall, except when otherwise required by law, be given personally, by e-mail or other electronic communication or by mail, not less than ten (10) nor more than sixty (60) days before the date of the meeting to each shareholder entitled to vote thereat. If mailed, notice shall be deemed given when deposited in the United States mail, postage prepaid, directed to the shareholder at his address as it appears on the records of the Corporation.

Section 1.5 Adjournments. At any meeting at which a quorum of shareholders is present, in person or represented by proxy, the chairman of the meeting or the holders of the majority of the shares of stock present or represented by proxy may adjourn from time to time until its business is completed. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which shareholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record entitled to vote at the meeting. Otherwise, no notice need be given. Any previously scheduled annual meeting of shareholders may be postponed, and any previously scheduled special meeting of shareholders may be postponed or cancelled, by resolution of the board of directors upon public notice given prior to the time previously scheduled for such meeting of shareholders. The chairman of any meeting of the shareholders may adjourn the meeting from time to time, whether or not there is a quorum present or represented.

Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 1.6 Quorum. Except as otherwise required by the Act, the Corporation's Certificate of Incorporation and any amendments or supplements thereto or certificates of designation (the "Certificate of Incorporation"), or these Bylaws, the presence in person or by proxy of the holders of record of a majority of the shares of stock of the Corporation entitled to vote at a meeting of shareholders shall constitute a quorum for the transaction of business at such meeting. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum.

Section 1.7 Voting.

(a) Unless otherwise provided by the Certificate of Incorporation, at every meeting of shareholders, each shareholder shall be entitled to one vote, in person or by proxy, for each share of stock having voting power held by such shareholder. Unless otherwise provided by law, no proxy shall be voted on or after three (3) years from its

date unless the proxy provides for a longer period. All elections and questions shall be decided by a plurality of the votes cast, in person or by proxy, except as provided in Section 1.7(b) of this Article or otherwise required by law, or any stock exchange requirements or as set forth in the Certificate of Incorporation, these Bylaws or the terms of any series of outstanding preferred stock.

(b) In an uncontested director election, (i) any non-incumbent director nominee standing for election by the shareholders who receives a greater number of votes cast "against" such nominee's election than votes "for" such nominee's election (a "Majority Against Vote") shall not be elected a director; and (ii) any incumbent director nominee standing for election by the shareholders who receives a Majority Against Vote shall, following certification of the shareholder vote by the inspector of elections, promptly comply with the resignation procedures established by the nominating and corporate governance committee and published on the Corporation's corporate website or in a public disclosure.

Section 1.8 List of Shareholders. Unless otherwise provided in the Act, at least ten (10) days before every meeting of shareholders, a complete list of the shareholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each shareholder, and the number of shares registered in the name of each shareholder, shall be prepared by the officer in charge of the stock ledger. Such list shall be open to the examination of any shareholder, for any purpose germane to the meeting, for a period of at least ten (10) days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to shareholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time of the meeting and may be inspected by any shareholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any shareholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. The stock ledger shall be the only evidence as to which shareholders are entitled to examine the stock ledger, the list required by this Section or the books of the Corporation, or to vote in person or by proxy at any meeting of shareholders.

Section 1.9 Organization. At each meeting of shareholders, the chairman of the board of directors, if one shall have been elected (or in his or her absence or if one shall not have been elected, the chief executive officer), shall act as chairman of the meeting. The secretary (or in his or her absence or inability to act, the person whom the chairman of the meeting shall appoint secretary of the meeting) shall act as secretary of the meeting and keep the minutes thereof.

Section 1.10 Order of Business. The chairman of the meeting shall determine the order of business and the procedure at the meeting, including regulation of the manner of voting and the conduct of discussion.

Section 1.11 Nomination of Directors.

(a) Nominations of persons for election to the board of directors of the Corporation to be held at a meeting of shareholders may be made (i) by or at the direction of the board of directors, (ii) by a shareholder of the Corporation who (A) was a shareholder of record both at the time of giving of the notice provided for in this Section 1.11 and at the time of the annual meeting (including any adjournment or postponement thereof), (B) is entitled to vote at such meeting and (C) meets the requirements of and complies with the procedures set forth in this Section 1.11 as to such nomination, (iii) by an Eligible Shareholder (as defined in Section 1.11(f)), or (iv) pursuant to Section 1.3(e). For the avoidance of doubt, nominations of persons for election to the board of directors of the Corporation to be held at a special meeting of shareholders shall be made pursuant to Section 1.3.

(b) For any director nominations to be properly brought before an annual meeting by a shareholder pursuant to these Bylaws, the shareholder must have given timely notice thereof in writing to the secretary of the Corporation. To be timely, a shareholder's notice (other than a notice submitted in order to include a Shareholder Nominee in the Corporation's proxy materials, as defined and described in Section 1.11(f) below) must be delivered to the principal executive offices of the Corporation not earlier than the close of business on the 120th day and not later than the close of business on the 90th day prior to the first anniversary of the preceding year's annual meeting (for purposes of the Corporation's annual meeting to be held in 2022, such anniversary shall be deemed to be June 1, 2021); provided, however, that in the event that the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the shareholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to the date of such annual meeting and not later than the close of business on the later of the 90th day prior to the date of such annual meeting or, the tenth day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a shareholder's notice as described above. For the avoidance of doubt, a shareholder shall not be entitled to make additional or substitute nominations following the expiration of the time periods set forth in these Bylaws.

(c) In order to be effective, the shareholder's notice referred to in Section 1.11(b) or Section 1.3(e) shall set forth:

(i) as to the shareholder giving the notice (the "Noticing Shareholder") and the beneficial owner, if any, on whose behalf the nomination is made (collectively with the Noticing Shareholder, the "Holders", and each a "Holder"): (A) the name and address as they appear on the Corporation's books of each Holder and the name and address of any such beneficial owner, if any; (B) the class or series and number of shares of the Corporation which are, directly or indirectly, owned beneficially and of record each Holder and such beneficial owner (provided, however, that for purposes of this Section 1.11(c)(i), any such person shall in all events be deemed to beneficially own an shares of the

Corporation as to which such person has a right to acquire beneficial ownership of at any time in the future); (C) any option, warrant, convertible security, stock appreciation right or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived, in whole or in part, from the value of any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise, directly or indirectly owned beneficially by each Holder and each beneficial owner and any of their respective affiliates or associates, if any, and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation; (D) a description of all agreements, arrangements and understandings between such Holder and any such beneficial owner, if any, and any other person or persons (including their names) in connection with the nomination (or, in the case of the application of this clause to Section 1.12(c)(ii), other business); (E) a representation that the Holder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to bring such nomination or other business before the meeting; (F) a representation as to whether such Holder or any such beneficial owner intends or is part of a group that intends to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of the Corporation's outstanding capital stock required to approve or adopt the proposal or to elect each such nominee (or, in the case of the application of this clause to Section 1.12(c)(ii), approve such other business); and (G) any other information relating to each Holder and any such beneficial owner that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the "Exchange Act");

(ii) as to each person whom the Noticing Shareholder proposes to nominate for election or reelection to the board of directors (A) the name, age, business address and residence address of such person, (B) the principal occupation or employment of such person (present and for the past five years), (C) the ownership information specified in Section 1.11(c)(i) for such person and any member of the immediate family of such person, or any affiliate or associate of such person, or any person acting in concert therewith, (D) all information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected), (E) a reasonably detailed description of any compensatory, payment or other financial agreement, arrangement or understanding that such person has with any other person or entity other than the Corporation including the amount of any payment or payments received or receivable thereunder, in each case in connection with

candidacy or service as a director of the Corporation (a "Third-Party Compensation Arrangement") and (F) whether such person meets the independence requirements of the stock exchange upon which the Corporation's Common Stock is primarily traded;

(iii) with respect to each nominee for election or reelection to the board of directors, a completed and signed questionnaire, representation and agreement required by Section 1.11(e). The Corporation may also, as a condition to any such nomination or business being deemed properly brought before an annual meeting, require any Holder or any proposed nominee to deliver to the secretary, within five (5) Business Days of any such request, such other information as may be reasonably requested by the Corporation, acting in good faith, including such other information as may be reasonably required by the board of directors to determine (A) the eligibility of such proposed nominee to serve as a director of the Corporation, (B) whether such nominee qualified as an "independent director" or "audit committee financial expert" under applicable law, securities exchange rule or regulation, or any publicly disclosed corporate governance guideline or committee charter of the Corporation and (C) such other information that the board of directors reasonably determines, acting in good faith, would be material to a reasonable shareholder's understanding of independence, or lack thereof, of such nominee; and

(iv) a Noticing Shareholder will use commercially reasonable efforts to update and supplement such notice in writing to the secretary of the Corporation, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 1.11(c) is true and correct in all material respects as of the record date for the meeting. In the case of an update and supplement pursuant to clause (i) of the foregoing sentence, such update and supplement will be received by the secretary of the Corporation at the principal executive office of the Corporation not later than five (5) Business Days after the record date for the meeting, and in the case of an update and supplement pursuant to clause (ii) of the foregoing sentence, such update and supplement will be received by the secretary of the Corporation at the principal executive office of the Corporation not later than two (2) Business Days prior to the date for the meeting, and, in the event of any adjournment or postponement thereof, two (2) Business Days prior to such adjourned or postponed meeting.

(d) Notwithstanding anything in Section 1.11(b) or 1.11(f) of this Article I to the contrary, in the event that the number of directors to be elected to the board of directors is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased board of directors at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a shareholder's notice required by this Article I shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the secretary of the Corporation at the principal executive offices of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

(e) To be eligible to be a nominee for election or reelection as a director of the Corporation, a person must complete and deliver (in accordance with the time periods prescribed for delivery of notice under this Section 1.11) to the secretary of the Corporation at the principal executive offices of the Corporation: (1) a completed D&O questionnaire containing information regarding the nominee's background and qualifications and such other information as may reasonably be requested by the Corporation to determine the eligibility of such proposed nominee to serve as a director of the Corporation (which questionnaire shall be in the same form provided by the Corporation to all director nominees, whether nominated by the shareholders or otherwise, and shall be provided by the secretary of the Corporation upon written request of any shareholder of record identified by name within two (2) Business Days of such request) and (2) a written representation that, unless previously disclosed to the Corporation, the nominee is not and will not become a party to any voting agreement, arrangement or understanding with any person or entity as to how such nominee, if elected as a director, will vote on any issue or that could interfere with such person's ability to comply, if elected as a director, with such director's fiduciary duties under applicable law, (3) a written representation and agreement that, unless previously disclosed to the Corporation pursuant to Section 1.11(c)(ii), the nominee is not and will not become a party to any Third-Party Compensation Arrangement and (4) a written representation that, if elected as a director, such nominee would be in compliance and will continue to comply with the Corporation's publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation and will abide by the requirements of Section 1.7(b), if applicable.

(f) The Corporation shall include in its proxy statement for an annual meeting of shareholders the name of any person nominated for election to the board of directors (the "Shareholder Nominee") by a shareholder or group of shareholders that satisfies the requirements of this Section 1.11(f) (the "Eligible Shareholder"), together with the Required Information (defined below), who expressly elects at the time of providing the notice required by this Section 1.11(f) to have its nominee included in the Corporation's proxy materials pursuant to this Section 1.11(f). Such notice shall consist of a copy of Schedule 14N filed with the Securities and Exchange Commission in accordance with Rule 14a-18 of the Exchange Act and the information required by Sections 1.11(c)(i), (ii), and (iii) above, along with any additional information as required to be delivered to the Corporation by this Section 1.11(f) (all such information collectively referred to as the "Notice"), and such Notice shall be delivered to the Corporation in accordance with the procedures and at the times set forth in this Section 1.11(f).

(i) Notwithstanding the procedures set forth in Section 1.11(b), the Notice, to be timely, must be received at the principal executive offices of the Corporation not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, the Notice by the shareholder to be timely must be so delivered not earlier than the close of business on the 120th day prior

to the date of such annual meeting and not later than the close of business on the later of the 120th day prior to the date of such annual meeting or, the tenth day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a shareholder's Notice as described above.

(ii) For purposes of this Section 1.11(f), the "Required Information" that the Corporation will include in its proxy statement consists of (i) the information concerning the Shareholder Nominee and the Eligible Shareholder that is required to be disclosed in a proxy statement of the Corporation by the rules and regulations of the Exchange Act; and (ii) if the Eligible Shareholder so elects, a Statement (defined below).

(iii) The Corporation shall not be required to include, pursuant to this Section 1.11(f), any Shareholder Nominee in its proxy materials for any meeting of shareholders for which the secretary of the Corporation receives a notice that the nominating shareholder has nominated a person for election to the Board of Directors pursuant to the advance notice requirements for Shareholder Nominees for director set forth in Section 1.11(b) of these Bylaws.

(iv) The maximum number of Shareholder Nominees appearing in the Corporation's proxy materials with respect to an annual meeting of shareholders shall not exceed the greater of two (2) and 25% of the number of directors in office as of the last day on which the Notice may be delivered, or if such amount is not a whole number, the closest whole number below (the "Maximum Number"). Shareholder Nominees that were submitted by an Eligible Shareholder for inclusion in proxy materials of the Corporation pursuant to this Section 1.11(f) but either are subsequently withdrawn, or that the Board of Directors itself determines to nominate for election, shall be included in the Maximum Number. In the event that the number of Shareholder Nominees submitted by Eligible Shareholders pursuant to this Section 1.11(f) exceeds this Maximum Number, each Eligible Shareholder will select one Shareholder Nominee for inclusion in the Corporation's proxy materials until the Maximum Number is reached, proceeding in order of the amount of shares of common stock of the Corporation, par value per share $0.01 (the "Common Stock"), (largest to smallest) disclosed as owned by each Eligible Shareholder in the Notice. If the Maximum Number is not reached after each Eligible Shareholder has selected one Shareholder Nominee, this selection process will continue as many times as necessary, following the same order each time, until the Maximum Number is reached.

(v) For purposes of this Section 1.11(f), an Eligible Shareholder shall be deemed to "own" only those outstanding shares of Common Stock as to which the shareholder possesses both (i) the full voting and investment rights pertaining to the shares and (ii) the full economic interest in (including the opportunity for profit and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (i) and (ii) shall not include any shares (x) sold by such shareholder or any of its affiliates in any transaction that has not

been settled or closed, including short sales, (y) borrowed, for purposes other than a short sale, by such shareholder or any of its affiliates for any purposes or purchased by such shareholder or any of its affiliates pursuant to an agreement to resell, or (z) subject to any option, warrant, forward contract, swap, contract of sale, other Derivative Instrument or similar agreement entered into by such shareholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares of outstanding Common Stock, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of (1) reducing in any manner, to any extent or at any time in the future, such shareholder's or its affiliates' full right to vote or direct the voting of any such shares, and/or (2) hedging, offsetting or altering to any degree gain or loss arising from the full economic ownership of such shares by such shareholder or affiliate. A shareholder shall "own" shares held in the name of a nominee or other intermediary so long as the shareholder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. A shareholder's ownership of shares shall be deemed to continue during any period in which the shareholder has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement which is revocable at any time by the shareholder. The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. Whether outstanding shares of the Common Stock are "owned" for these purposes shall be determined by the board of directors.

(vi) An Eligible Shareholder must have owned (as defined in Section 1.11(f)(v) above) 3% or more of the Corporation's issued and outstanding Common Stock (the "Required Shares") continuously for at least three (3) years, or in the case of holders of Allowed FLLO Term Loan Facility Claims or Allowed Second Lien Notes Claims receiving Common Stock, in each case as defined and pursuant to that certain Joint Chapter 11 Plan of Reorganization of Chesapeake Energy Corporation and its debtor affiliates approved by order of the United States Bankruptcy Court for the Southern District of Texas in *In re: Chesapeake Energy Corporation, et al.*, Case No. 20-33233, under Chapter 11 of the United States Code, 11 U.S.C. §§ 101–1532, as amended, one (1) year (as applicable, the "Requisite Period"), as of both the date the Notice is required to be received by the Corporation in accordance with this Section 1.11(f) and the record date for determining shareholders entitled to vote at the annual meeting, and must continue to hold the Required Shares through the meeting date. Within the time period specified in this Section 1.11(f) for delivery of the Notice, an Eligible Shareholder must provide the following information in writing to the secretary of the Corporation: (i) one or more written statements from the record holder of the shares (and from each intermediary through which the shares are or have been held during the Requisite Period) verifying that, as of a date within three calendar days prior to the date the Notice is received by the Corporation, the Eligible Shareholder owns, and has owned continuously for the Requisite Period, the Required Shares, and the Eligible Shareholder's agreement to provide, within five (5) Business Days after the record date for the annual meeting, written statements

from the record holder and intermediaries verifying the Eligible Shareholder's continuous ownership of the Required Shares through the record date, along with a written statement that the Eligible Shareholder will continue to hold the Required Shares through the meeting date; (ii) the information required to be set forth in the Notice, together with the written consent of each Shareholder Nominee to being named in the proxy statement as a nominee and to serving as a director if elected; (iii) a representation that the Eligible Shareholder (A) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control of the Corporation, and neither the Eligible Shareholder nor any Shareholder Nominee presently has such intent, (B) has not nominated and will not nominate for election to the board of directors at the annual meeting any person other than the Shareholder Nominee(s) being nominated pursuant to this Section 1.11(f), (C) has not engaged and will not engage in, and has not and will not be a "participant" in another person's "solicitation" within the meaning of Rule 14a-1 (l) under the Exchange Act in support of the election of any individual as a director at the annual meeting other than its Shareholder Nominee or a nominee of the board of directors, and (D) will not distribute to any shareholder any form of proxy for the annual meeting other than the form distributed by the Corporation; and (iv) an undertaking that the Eligible Shareholder agrees to (A) assume all liability stemming from any legal or regulatory violation arising out of the Eligible Shareholder's communications with the shareholders of the Corporation or out of the information that the Eligible Shareholder provided to the Corporation, (B) comply with all other laws and regulations applicable to any solicitation in connection with the annual meeting, and (C) provide to the Corporation prior to the election of directors such additional information as reasonably requested with respect thereto. The inspector of election shall not give effect to the Eligible Shareholder's votes with respect to the election of directors if the Eligible Shareholder does not comply with each of the representations set forth in clause (iii) above.

(vii) The Eligible Shareholder may provide to the secretary of the Corporation, at the time the information required by this Section 1.11(f) is provided, a written statement for inclusion in the proxy statement for the Corporation's annual meeting, not to exceed five hundred (500) words, in support of the Shareholder Nominee's candidacy (the "Statement"). Notwithstanding anything to the contrary contained in this Section 1.11(f), the Corporation may omit from its proxy materials any information or Statement that it, in good faith, believes is materially false or misleading, omits to state any material fact, or would violate any applicable law or regulation.

(viii) Within the time period specified in this Section 1.11(f) for providing Notice, a Shareholder Nominee must deliver to the secretary of the Corporation the written questionnaire described in Section 1.11(e) above, along with representations and agreements described in Section 1.11(e) above. The Corporation may request such additional information as necessary to permit the board of directors to determine if each Shareholder Nominee is independent under the listing standards of the principal U.S. exchange upon which the Common

Stock is listed, any applicable rules of the Securities and Exchange Commission and any publicly disclosed standards used by the board of directors in determining and disclosing the independence of its directors. If the board of directors determines in good faith that the Shareholder Nominee is not independent under any of these standards, the Shareholder Nominee will not be eligible for inclusion in the Corporation's proxy materials.

(ix) Any Shareholder Nominee who is included in the Corporation's proxy materials for a particular annual meeting of shareholders but either (i) withdraws from or becomes ineligible or unavailable for election at the annual meeting, or (ii) does not receive at least 25% of the votes cast in favor of the election of such Shareholder Nominee, will be ineligible to be a Shareholder Nominee pursuant to this Section 1.11(f) for the next two annual meetings of the Corporation.

(g) The chairman of the meeting, acting in good faith, shall reasonably determine, based on the facts, whether a nomination proposed to be brought before the meeting was made in accordance with the procedures of this Section 1.11 or Section 1.3 and, if any proposed nomination is not in compliance with this Section 1.11 or Section 1.3, as the case may be, to declare that such defective nomination shall be disregarded.

(h) For purposes of this Section 1.11 and Section 1.12, as applicable,

(i) "Business Day" shall mean each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in Oklahoma City, Oklahoma or New York, New York are authorized or obligated by law or executive order to close.

(ii) "close of business" shall mean 5:00 p.m. local time at the principal executive offices of the Corporation, and if applicable deadline falls on the close of business on a day that is not a Business Day, then the applicable deadline shall be deemed to be the close of business on the immediately preceding Business Day.

(iii) Delivery of any notice or materials by a shareholder shall be made by both (1) hand delivery, overnight courier service, or by certified or registered mail, return receipt required, in each case, to the secretary at the principal executive offices of the Corporation, and (2) electronic mail to the secretary at the email address for the secretary as specified in the Corporation's proxy statement for the annual meeting of shareholders immediately preceding such delivery of notice or materials.

(iv) "public announcement" shall mean any method (or combination of methods) of disclosure that is reasonably designed to provide broad, non-exclusionary distribution of information to the public or the furnishing or filing of any document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14, 15(d) or the Exchange Act and the rules and regulations promulgated thereunder.

Section 1.12 Notice of Other Business; Shareholder Proposals.

(a) At any annual meeting of the shareholders, only such business (other than the nomination of directors, which shall be governed by Section 1.11 of this Article I) shall be conducted as shall have been brought before the meeting (i) by or at the direction of the board of directors or (ii) by any shareholder of the Corporation who (A) was a shareholder of record at the time of giving of the notice provided for in this Section 1.12 and at the time of the annual meeting (including any adjournment or postponement thereof), (B) is entitled to vote at such meeting and (C) complies with the procedures set forth below as to the presentation of business at the meeting. For the avoidance of doubt and subject to Section 1.3, clause (ii) of this Section 1.12(a) shall be the exclusive means for a shareholder to present business (other than director nominations, which shall be governed by Section 1.11 of this Article I) before an annual meeting of shareholders.

(b) For business other than the nomination of persons to be elected as directors to be properly brought before an annual meeting by a Noticing Shareholder, the Noticing Shareholder must have given timely notice thereof in writing to the secretary of the Corporation. To be timely, a Noticing Shareholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation not earlier than the close of business on the 120th day and not later than the close of business on the 90th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the Noticing Shareholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to the date of such annual meeting and not later than the close of business on the later of the 90th day prior to the date of such annual meeting or, the tenth day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a Noticing Shareholder's notice as described above.

(c) In order to be effective the Noticing Shareholder's notice shall set forth:

(i) as to the Noticing Shareholder and the beneficial owner, if any, on whose behalf the business is to be brought before the meeting, the information set forth above; and

(ii) as to each matter the Noticing Shareholder purposes to bring before the meeting: (A) a brief description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting (which, if the proposal is for any alteration, amendment, rescission or repeal of the Certificate of Incorporation of these Bylaws, shall include the text of the resolution which will be proposed to implement the same); (B) the reasons for conducting such business at the annual meeting; (C) all information required to be provided by a Noticing Shareholder pursuant to Section 1.11(c)(i); and (D) an undertaking by such Noticing Shareholder to update the information required pursuant to this paragraph as of the record date for the meeting promptly

following the later of the record date for the meeting or the date notice of the record date is first publicly disclosed.

(d) If the chairman of the meeting, acting in good faith, shall reasonably determine, based on the facts, that business was not properly brought before the meeting in accordance with the procedures set forth in this Section 1.12, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

(e) Notwithstanding the foregoing provisions of this Section 1.12, a shareholder shall also comply with all applicable requirements of the Exchange Act with respect to the matters set forth in this Section 1.12. Nothing in these Bylaws shall be deemed to affect any rights of shareholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

Section 1.13 Action by Remote Communication. If authorized by the board of directors in its sole discretion, and subject to such guidelines and procedures as the board of directors may adopt, shareholders and proxyholders not physically present at a meeting of shareholders may, by means of remote communication: (i) participate in a meeting of shareholders and (ii) be deemed present in person and vote at a meeting of shareholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (A) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a shareholder or proxyholder, (B) the Corporation shall implement reasonable measures to provide such shareholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings and (C) if any shareholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

Section 1.14 Inspectors of Elections. The Corporation shall, in advance of any meeting of shareholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of shareholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of the duties of inspector, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of the inspector's ability. The inspectors shall ascertain the number of shares outstanding and the voting power of each, determine the number of shares represented at a meeting and the validity of proxies and ballots, count all votes and ballots, determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors.

Section 1.15 Fixing Date for Determination of Shareholders of Record. In order that the Corporation may determine the shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend or other

distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the board of directors may fix, in advance, a record date, which shall not be more than sixty (60) nor less than ten (10) days before the date of such meetings, nor more than sixty (60) days prior to any other action. A determination of shareholders of record entitled to notice of and to vote at a meeting of shareholders shall apply to any adjournment or postponement of the meeting; provided, however, that the board may fix a new record date for the adjourned or postponed meeting.

Section 1.16 Conduct of Shareholders' Meetings. The board of directors may adopt by resolution such rules and regulations for the conduct of any meeting of the shareholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the board of directors, the chairman of any meeting of the shareholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the board of directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) the determination of when the polls shall open and close for any given matter to be voted on at the meeting; (c) rules and procedures for maintaining order at the meeting and the safety of those present; (d) limitations on attendance at or participation in the meeting to shareholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (e) restrictions on entry to the meeting after the time fixed for the commencement thereof; (f) limitations on the time allotted to questions or comments by participants; (g) limitations on the time allotted to questions or comments by participants; and (h) restrictions on the use of cell phones, audio or video recording devices and similar devices at the meeting. The chairman of the meeting's rulings on procedural matters shall be final. Unless and to the extent determined by the board or the chairman of the meeting, meetings of shareholders shall not be required to be held in accordance with the rules of parliamentary procedure.

ARTICLE II
Directors

Section 2.1 Powers. The business and affairs of the Corporation shall be managed by or under the direction of its board of directors, except as otherwise provided in the Act or the Certificate of Incorporation.

Section 2.2 Number; Election. Subject to the addition of any directors elected by a class of preferred stock as provided in the Certificate of Incorporation, the number of directors which shall constitute the whole board of directors shall not be less than three (3) nor more than ten (10), and shall be determined by resolution adopted by a vote of a majority of the entire board of directors then in office, or at an annual or special meeting of shareholders by the affirmative vote of at least a majority of the outstanding stock entitled to vote. No reduction in number shall have the effect of removing any director prior to the expiration of his term.

No person may stand for election to, or be elected to, the board of directors or be appointed by the directors to fill a vacancy on the board of directors who shall have made, or be making, improper or unlawful use of the Corporation's confidential information.

All elections of directors shall be by written ballot unless otherwise provided in the Certificate of Incorporation. However, if authorized by the board of directors in its sole discretion, the ballot may be submitted by electronic transmission, provided that any such electronic transmission must either set forth, or be submitted with, information from which it can be determined that the electronic transmission was authorized by the shareholder or proxyholder.

Section 2.3 Vacancies. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, though less than a quorum, and the directors so chosen shall hold office until the next annual meeting of shareholders and until his or her successor is duly elected and qualified, or until his or her earlier resignation or removal.

Section 2.4 Place of Meetings. Board of directors meetings may be held at such places (if any), within or without the State of Oklahoma, as the board of directors may, from time to time, determine or as may be specified in the call of any meetings.

Section 2.5 Regular Meetings. The annual meeting of the board shall be held without call or notice as soon as practicable after and at the same general place as the annual meeting of the shareholders, for the purpose of electing officers and transacting any other business that may properly come before the meeting. Additional regular meetings of the board may be held without call or notice at such place and at such time as shall be fixed by resolution of the board but in the absence of such resolution shall be held upon call by the chairman of the board, the chief executive officer or the president or a majority of the directors then in office by providing the notice required by Section 2.6 of this Article II.

Section 2.6 Special Meetings. Special meetings of the board may be called by the chairman of the board, the chief executive officer or the president or by a majority of the directors then in office. Notice of special meetings to each director shall be (a) delivered personally by hand, by courier or by telephone; (b) sent by United States first-class mail, postage prepaid; (c) sent by facsimile; or (d) sent by electronic mail or any other form of electronic communication, directed to each director at that director’s address, telephone number, facsimile number or electronic mail address, as the case may be, as shown on the Corporation’s records. If the notice is delivered by telephone, it shall be communicated at least twelve (12) hours before the time of the holding of the meeting to each director individually or, as applicable, to any person designated by a director to receive such notice. If the notice is (x) delivered personally by hand or by courier, (y) sent by facsimile or (z) sent by electronic mail or any other form of electronic communication, it shall be delivered or sent at least twelve (12) hours before the time of the holding of the meeting. If the notice is sent by United States mail, it shall be deposited in the United States mail at least three (3) days before the time of the holding of the meeting.

Such notice shall include the time and place of such meeting, but need not, unless otherwise required by law, state the purposes of the meeting. A majority of the directors present at any meeting may adjourn the meeting from time to time without notice other than announcement at the meeting.

Section 2.7 Quorum. A majority of the total number of directors, excluding any vacancies, shall constitute a quorum for the transaction of business at any meeting of the board. If at any meeting a quorum is not present, a majority of the directors present may adjourn the

meeting from time to time without notice other than announcement at the meeting until a quorum is present. The act of a majority of directors present in person at a meeting at which a quorum is present shall be the act of the board of directors.

Section 2.8 Presence at Meeting. The board of directors or any committee of the board of directors may hold meetings by means of conference telephone, video conferencing, web-casting or other telecommunications equipment that enable all persons participating in the meeting to hear and speak to each other. Such participation shall be deemed presence in person at such meeting.

Section 2.9 Action Without Meeting. Any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof, may be taken without a meeting if all members of the board or such committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or electronic transmission is filed with the minutes of the proceedings of the board or such committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 2.10 Committees of the Board. The board of directors may, by resolution passed by a majority of the directors then in office, designate one or more committees, each such committee to consist of one or more of the directors of the Corporation and shall have such name or names as may be determined from time to time by resolution adopted by the board. The board may designate one or more directors as alternate members of any committee who may replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in the resolution, shall have and may exercise the powers of the board of directors in the management of the business and affairs of the Corporation, and generally perform such duties and exercise such powers as may be directed or delegated by the board of directors from time to time and, furthermore, may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the Certificate of Incorporation (except that a committee may, to the extent authorized in the resolution(s) providing for the issuance of shares of stock adopted by the board of directors as provided in Section 1032(A) of the Act, fix the designations and any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the Corporation or the conversion into, or the exchange of such shares for shares of any other class or classes or any other series of the same or any other class or classes or stock of the Corporation or fix the number of shares of any series of stock or authorize the increase or decrease of the shares of any series), adopting an agreement of merger or consolidation, recommending to the shareholders the sale, lease or exchange of all or substantially all of the Corporation’s property and assets, recommending to the shareholders a dissolution of the Corporation or a revocation of a dissolution, or amending the bylaws of the Corporation; and unless the resolution of the board of directors, the Certificate of Incorporation or these Bylaws expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock or to adopt a certificate of ownership and merger pursuant to the Act. In the absence or disqualification of any member of such committee or committees, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the board to act at the meeting in the place of such absent or disqualified member.

Each such committee shall keep regular minutes of its proceedings and report the same to the board of directors as and when required.

Section 2.11 Compensation. Each director shall be reimbursed for reasonable expenses incurred in attending any meeting of the board or of any committee of which such director shall be a member. The board may, by resolution, allow reasonable fees to some or all of the directors for attendance at any board or committee meeting. No such payment shall preclude any directors from serving the Corporation in any other capacity and receiving compensation therefor.

Section 2.12 Emergency Management Committee. If as a result of a catastrophe or other emergency condition a quorum of any committee of the board of directors having power to act in the premises cannot readily be convened and a quorum of the board of directors cannot readily be convened, then all the powers and duties of the board of directors shall automatically vest and continue, until a quorum of the board of directors can be convened, in the Emergency Management Committee, which shall consist of all readily available members of the board of directors and two of whose members shall constitute a quorum. The Emergency Management Committee shall call a meeting of the board of directors as soon as circumstances permit for the purpose of filling any vacancies on the board of directors and its committees and taking such other action as may be appropriate.

Section 2.13 Resignation. Any director may resign at any time upon notice given in writing or by electronic transmission to the board of directors or to the secretary of the Corporation. The resignation of any director shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 2.14 Removal. Any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors.

Section 2.15 Preferred Directors. Notwithstanding anything else contained herein, whenever the holders of one or more classes or series of preferred stock shall have the right, voting separately as a class or series, to elect directors, the nomination, election, term of office, filling of vacancies, removal and other features of such directorships shall be governed by the terms of the certificate of designation for such classes or series.

Section 2.16 Reliance on Accounts and Reports. A director, or a member of any committee designated by the board of directors, shall, in the performance of his or her duties, be fully protected in relying in good faith upon the records of the Corporation and upon information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees designated by the board of directors, or by any other person as to the matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 2.17 Ratification. Any transaction questioned in any shareholders' derivative proceeding on the ground of lack of authority, defective or irregular execution, adverse interest of director, officer or shareholder, non-disclosure, miscomputation, or the application of

improper principles or practices of accounting may be ratified before or after judgment, by the board of directors (excluding any director who is a party to such proceeding) or by the shareholders if less than a quorum of directors is qualified; and, if so ratified, shall have the same force and effect as if the questioned transaction had been originally duly authorized, and said ratification shall be binding upon the Corporation and its shareholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned transaction.

Section 2.18 Interested Directors or Officers. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other Corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers or have a financial interest, shall be void or voidable solely for this reason, solely because the director or officer is present at or participates in the meeting of the board of directors or committee thereof which authorizes the contract or transaction or solely because the director's or officer's vote is counted for such purpose if: (a) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors or the committee, and the board of directors or committee, in good faith, authorizes the contract or transaction by the affirmative votes of a majority of the Disinterested Directors (as herein defined), even though the Disinterested Directors be less than a quorum; (b) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the shareholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the shareholders; or (c) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the board of directors, a committee thereof or the shareholders. Interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes the contract or transaction.

ARTICLE III
Officers and Employees

Section 3.1 Election. The board shall elect annually such officers as may be necessary to enable the Corporation to sign instruments and stock certificates which comply with the Act. Such officers may include a chairman of the board, chief executive officer, a president, one or more vice presidents (who may be designated by different classes), a secretary, a treasurer and other officers. No officer need be a director. Two or more offices may be held by the same person.

Section 3.2 Term, Removal and Vacancies. All officers shall serve at the pleasure of the board. Any officer elected or appointed by the board may be removed at any time by the board whenever in its judgment the best interests of the Corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. A vacancy in any office shall be filled by the board of directors.

Section 3.3 Chairman of the Board. The chairman of the board, if one has been elected, shall preside at all meetings of the board, shareholders and committees of which he or she is a member. He or she shall have such powers and perform such duties as may be authorized by the board of directors.

Section 3.4 Chief Executive Officer. If the board of directors has elected a chairman of the board, it may designate the chairman of the board as the chief executive officer of the Corporation. If no chairman of the board has been elected, or in his or her absence or inability to act, or if no such designation has been made by the board of directors, the board of directors shall elect a chief executive officer of the Corporation. The chief executive officer shall (i) have the overall supervision of the business of the Corporation and shall direct the affairs and policies of the Corporation, subject to any directions which may be given by the board of directors, (ii) have authority to designate the duties and powers of officers and delegate special powers and duties to specified officers, so long as such designations shall not be inconsistent with the laws of the State of Oklahoma, these Bylaws or action of the board of directors, and (iii) in general have all other powers and shall perform all other duties incident to the chief executive officer of a Corporation and such other powers and duties as may be prescribed by the board of directors from time to time.

Section 3.5 President. If the board of directors has not designated the chairman of the board as the chief executive officer of the Corporation or otherwise elected a chief executive officer, then the president shall be the chief executive officer of the Corporation with the powers and duties provided in Section 3.4 of this Article III. If the board of directors has designated the chairman of the board as the chief executive officer of the Corporation or if the board of directors has elected a chief executive officer who is not also the president, the president shall serve as chief operating officer and be subject to the control of the board of directors and the chief executive officer. In any event, the president shall have the power to execute, and shall execute, bonds, deeds, mortgages, extensions, agreements, modification of mortgage agreements, leases and contracts or other instruments of the Corporation except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the board of directors, the chief executive officer or by the president to some other officer or agent of the Corporation. The president, in general, shall have all other powers and shall perform all other duties as may be prescribed by the board of directors from time to time.

Section 3.6 Vice Presidents. A vice president shall perform such duties as may from time to time be assigned to him or her by the board, the chief executive officer or the president. If no president has been elected, or in the absence or inability to act of the president, the vice president (or if there is more than one vice president, in the order designated by the board and, absent such designation, in the order of their first election to that office) shall perform the duties and discharge the responsibilities of the president.

Section 3.7 Secretary. The secretary shall be the keeper of the corporate seal and records, and shall give notice of, attend and record minutes of meetings of shareholders and directors. He or she shall see that the seal is affixed to all documents on which the seal is required by law to be affixed, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these Bylaws. He or she shall, in general, perform all duties incident to the office of secretary and such other duties as may be assigned to him or her by the board or by the president. The assistant secretaries, if any, shall have such duties as shall be delegated to them by the secretary and, in the absence of the secretary, the senior of them present shall discharge the duties of the secretary.

Section 3.8 Treasurer. The treasurer shall be responsible for (i) the custody and safekeeping of all of the funds and securities of the Corporation, (ii) the receipt and deposit of all monies paid to the Corporation, (iii) where necessary or appropriate, the endorsement for collection on behalf of the Corporation of all checks, drafts, notes and other obligations payable to the Corporation, (iv) the disbursement of funds of the Corporation under such rules as the board may from time to time adopt, (v) maintaining the general books of account of the Corporation and (vi) the performance of such further duties as are incident to the office of treasurer or as may be assigned to him or her by the board or by the president. The assistant treasurers, if any, shall have such duties as shall be delegated to them by the treasurer, and in the absence of the treasurer, the senior one of them present shall discharge the duties of the treasurer.

Section 3.9 Divisional Officers. The board or the chief executive officer may from time to time appoint officers of various divisions of the Corporation. Divisional officers shall not by virtue of such appointment become officers of the Corporation. Subject to the direction of the chief executive officer of the Corporation, the president of a division shall have general charge, control and supervision of all the business operations of his or her division, and the other divisional officers shall have such duties and authority as may be prescribed by the president of the division.

Section 3.10 Officer Compensation. The compensation of all officers of the Corporation shall be fixed by the board of directors or a committee thereof.

ARTICLE IV
Stock Certificates and Transfer Books

Section 4.1 Certificates. The shares of the Corporation shall be represented by certificates, provided that the board of directors of the Corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Notwithstanding the adoption of any such resolution, shares represented by a certificate shall not become uncertificated shares until such certificate is surrendered to the Corporation. Any certificates representing shares of stock shall be in such form as the board shall from time to time approve, signed by, or in the name of, the Corporation by (i) the chairman of the board, if any, the president or any vice president and (ii) the treasurer, or assistant treasurer, or the secretary or an assistant secretary, certifying the number of shares owned by the shareholder in the Corporation. During the time in which the Corporation is authorized to issue more than one class of stock or more than one series of any class, there shall be set forth on the face or back of each certificate issued a statement that the Corporation will furnish without charge to each shareholder who so requests, the designations, preferences and relative, participating, option or other special rights of each class of stock or series thereof of the Corporation and the qualifications, limitations or restrictions of such preferences and/or rights.

The signatures of any of the officers on a certificate may be facsimiles. In case any officer who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer at the date of issue.

Within a reasonable time after the issuance or transfer of uncertificated stock, the Corporation shall send to the registered owner thereof a written notice that shall set forth the

name of the Corporation, the name of the shareholder, the number and class (and the designation of the series, if any) of the shares represented, and any restrictions on the transfer or registration of such shares imposed by the Certificate of Incorporation, these Bylaws, any agreement among shareholders or any agreement between shareholders and the Corporation.

Section 4.2 Record Ownership. A record of the name and address of each holder of certificated or uncertificated shares, the number of shares held, and the date of issue thereof shall be made on the Corporation's books. The Corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof, and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in any share on the part of any other person, whether or not it shall have express or other notice thereof, except as required by the laws of Oklahoma.

Section 4.3 Transfer Agent and Registrar. The Corporation may maintain one or more transfer offices or agencies, each in the charge of a transfer agent designated by the board, where the shares of stock of the Corporation shall be transferable. The Corporation may also maintain one or more registry offices, each in the charge of a registrar designated by the board, wherein such shares of stock shall be registered. To the extent authorized by the board, the same entity may serve both as a transfer agent and registrar.

Section 4.4 Lost Certificates. Any person claiming a stock certificate or uncertificated shares in lieu of a stock certificate lost, stolen, mutilated or destroyed shall give the Corporation an affidavit as to such person's ownership of the certificate and of the facts which go to prove its loss, theft, mutilation or destruction. Such person shall also, if required by the board, give the Corporation a bond, in such form as may be approved by the board, sufficient to indemnify the Corporation against any claim that may be made against it on account of the alleged loss or theft of the certificate or the issuance of a new certificate.

Section 4.5 Transfer of Stock. Transfer of shares shall, except as provided in Section 4.4 of this Article IV, be made on the books of the Corporation only by direction of the holder, whether named in the certificate or on the books of the Corporation as a holder of uncertificated shares, or the holder's attorney, lawfully constituted in writing, and, if held in certificate form, only upon surrender for cancellation of the certificate therefor, duly endorsed or accompanied by a written assignment of the shares evidenced thereby.

ARTICLE V
General Provisions

Section 5.1 Offices. The principal offices of the Corporation shall be maintained in Oklahoma City, Oklahoma, or at such other place as the board may determine. The Corporation may have such other offices as the board may from time to time determine.

Section 5.2 Voting of Stock and Other Securities. Unless otherwise ordered by the board, the chief executive officer, the president or any vice president shall have full power and authority, in the name and on behalf of the Corporation, to attend, act and vote at any meeting of security holders of any company in which the Corporation may hold shares of stock or other securities, and at any such meeting shall possess and may exercise any and all rights and powers incident to the ownership of such shares and which, as the holder thereof, the Corporation might

possess and exercise if personally present, and may exercise such power and authority through the execution of proxies or may delegate such power and authority to any other officer, agent or employee of the Corporation.

Section 5.3 Notices.

(a) Unless otherwise provided herein, whenever notice is required to be given, it shall not be construed to require personal notice, but such notice may be given in writing by depositing the same in the United States mail, addressed to the individual to whom notice is being given at such address as appears on the records of the Corporation, with postage thereon prepaid. Such notice shall be deemed to be given at the time when the same shall be thus deposited. Notice to directors may be given by any form of electronic transmission and as specified in Article II, Section 2.6.

(b) Without limiting the manner by which notice otherwise may be given effectively to shareholders, any notice to shareholders given by the Corporation under any provision of the Act, the Certificate of Incorporation, or these Bylaws shall be effective if given by a form of electronic transmission consented to by the shareholder to whom the notice is given. Any such consent shall be revocable by the shareholder by written notice to the Corporation. Any such consent shall be deemed revoked if: (i) the Corporation is unable to deliver by electronic transmission two (2) consecutive notices given by the Corporation in accordance with such consent and (ii) such inability becomes known to the secretary or an assistant secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(c) Notice given pursuant to Section 5.3(b) of this Article V shall be deemed given if by: (i) facsimile telecommunication, when directed to a number at which the shareholder has consented to receive notice; (ii) electronic mail, when directed to an electronic mail address at which the shareholder has consented to receive notice; (iii) a posting on an electronic network together with separate notice to the shareholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (iv) any other form of electronic transmission, when directed to the shareholder, in accordance with the shareholder's consent.

(d) An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the Corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

(e) Any notice to shareholders given by the Corporation shall be effective if given by a single written notice to shareholders who share an address if consented to by the shareholders at that address to whom such notice is given. Any such consent shall be revocable by the shareholder by written notice to the Corporation. Any shareholder who fails to object in writing to the Corporation, within sixty (60) days of having been given written notice by the Corporation of its intention to send the single notice permitted by this Section, shall be deemed to have consented to receiving such single written notice.

Section 5.4 Waiver of Notice. Whenever any notice is required to be given, a waiver thereof in writing, signed by the person or persons entitled to the notice, or a waiver by electronic transmission by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

Section 5.5 Exception to Notice. The giving of any notice required under any provision of the Act, the Certificate of Incorporation or these Bylaws shall not be required to be given to any shareholder to whom: (i) notice of two (2) consecutive annual meetings and all notices of meetings or of the taking of action by written consent without a meeting to such shareholder during the period between such two (2) consecutive annual meetings, or (ii) all, and at least two, payments (if sent by first class mail) of dividends or interest on securities during a twelve-month period, have been mailed addressed to such person at such person's address as shown on the records of the Corporation and have been returned undeliverable. If any such shareholder shall deliver to the Corporation a written notice setting forth such shareholder's then current address, the requirement that such notice be given to such shareholder shall be reinstated. The exception provided for in this Section 5.5 to the requirement that notice be given shall not be applicable to any notice returned as undeliverable if the notice was given by electronic transmission.

Section 5.6 Dividends. Subject to any applicable provisions of the Act and the Certificate of Incorporation, dividends upon the shares of the Corporation may be declared by the board of directors at any regular or special meeting of the board of directors and any such dividend may be paid in cash, property, or shares of stock of the Corporation. Before payment, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the board of directors from time to time, in its absolute discretion, believes proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation or for such other purpose as the board of directors shall believe conducive to the interest of the Corporation, and the board of directors may similarly modify or abolish any such reserve.

Section 5.7 Fiscal Year. The fiscal year of the Corporation shall be as fixed by the board of directors.

Section 5.8 Listing Request. If the Common Stock is not then listed on a National Securities Exchange (as defined below), holders of a majority of shares of Common Stock outstanding on February 9, 2021 (the "Effective Date") may at any time, by written notice to the Corporation (a "Listing Request"), request that the Corporation (a) list the shares of Common Stock on a National Securities Exchange or (b) list the shares of Common Stock on an Alternative Securities Exchange (as defined below), engage a market maker for the Common Stock and take other reasonable steps to establish that the Common Stock is regularly traded on an established securities market for purposes of Section 897 under the U.S. Internal Revenue Code of 1986 and Treasury regulations promulgated thereunder (together, the "FIRPTA Rules"). In the event the Common Stock is listed on an Alternative Securities Exchange but not a National Securities Exchange, holders of a majority of shares of Common Stock outstanding on the Effective Date shall have the right to make subsequent Listing Requests until the Corporation is listed on a National Securities Exchange, provided such listing is then permitted under the rules of such National Securities Exchange. The Corporation shall use its commercially reasonable efforts to cause the Common Stock to be publicly traded and listed on such National

Securities Exchange or Alternative Securities Exchange as promptly as reasonably practicable after the Corporation's receipt of such Listing Request. For purpose of this Section 5.8, "National Securities Exchange" means The Nasdaq Global Market, The Nasdaq Global Select Market or The New York Stock Exchange, and "Alternative Securities Exchange" means, excluding any National Securities Exchange, any other securities exchange or over-the-counter quotation system, including, without limitation, the NYSE American, the Nasdaq Capital Market, any quotation or other listing service provided by the OTC Markets Group or the Financial Industry Regulatory Authority, Inc., any "pink sheet" or other alternative listing service or any successor or substantially equivalent service to any of the foregoing.

Section 5.9 SEC Filings. If at any time the Corporation is not subject to the requirements of Section 13 or 15(d) of the Exchange Act, the Corporation shall file such information with the SEC as required by the Exchange Act and the SEC's rules and regulations within the time periods applicable to non-accelerated filers (as in effect on the date hereof and as may be amended from time to time), including, without limitation, with (a) all quarterly and annual financial information that would be required to be contained in a filing with the SEC on Forms 10-Q and 10-K in compliance with such forms if the Corporation were required to file such forms, and (b) all current reports that would be required to be filed with the SEC on Form 8-K if the Corporation were required to file such reports; provided that the Corporation shall not be required to file proxy statements or other documents required under Section 14 of the Exchange Act or Schedules 14A or 14C if not required by applicable law to file such proxy statements or other documents. The holders of a majority of the then outstanding shares of Common Stock may waive this Section 5.9.

ARTICLE VI
Indemnification of Officers, Directors, Employees and Agents

(a) The Corporation shall indemnify, to the fullest extent authorized or permitted by the laws of the State of Oklahoma as from time to time in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation or an action that such person initiated) by reason of the fact that he or she is or was a director, officer or employee of the Corporation or is or was a director, officer or employee serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interest of the Corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent shall not of itself create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interest of the Corporation and with respect to any criminal action or proceeding had reasonable cause to believe that his or her conduct was unlawful.

(b) The Corporation shall indemnify, to the fullest extent authorized or permitted by the laws of the State of Oklahoma as from time to time in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer or employee of the Corporation or is or was a director, officer or employee serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise against expenses (including attorney's fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interest of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the court in which such action or suit was brought shall determine, upon application, that despite the adjudication of liability, but in the view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

(c) For purposes of any determination under this Article VI, a person shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe such person's conduct was unlawful, if such person's action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The provisions of this Article VI shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct in this Article VI. The term "another enterprise" as used in Article VI shall mean any other Corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent.

(d) Expenses, including fees and expenses of counsel, incurred by a director, officer or employee in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the director, officer or employee to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized herein. Such advances shall paid by the Corporation within twenty (20) days after the receipt by the Corporation of a written statement or statements from the claimant requesting such advance or advances from time to time.

(e) To obtain indemnification under this Bylaw, a claimant shall submit to the Corporation a written request, including therein or therewith such documentation and information as is reasonably available to the claimant and is reasonably necessary to determine whether and to what extent the claimant is entitled to indemnification. Upon such written request by a claimant for indemnification, a determination, if required by applicable law, with respect to

the claimant's entitlement thereto shall be made as follows: (i) by the board of directors by a majority vote of a quorum consisting of Disinterested Directors (as herein defined); (ii) if a quorum of the board of directors consisting of Disinterested Directors is not obtainable or, even if obtainable, such quorum of Disinterested Directors so directs, by Independent Counsel in a written opinion to the board of directors, a copy of which shall be delivered to the claimant or (iii) if a quorum of Disinterested Directors so directs, by the shareholders of the Corporation. For purposes of this Article VI:

"Disinterested Director" means a director of the Corporation who is not and was not a party to the matter in respect of which indemnification is sought by the claimant.

"Independent Counsel" means a law firm, a member of a law firm, or an independent practitioner, that is experienced in matters of Corporation law and neither currently is, nor in the five years previous to its selection or appointment has been, retained to represent (i) the Corporation or the claimant in any matter material to either such party (other than with respect to matters concerning the claimant under this Article VI or of other similar indemnitees) or (ii) any other party to the action giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Corporation or the claimant in an action to determine the claimant's rights under this Article VI.

(f) If a claim under this Bylaw is not paid in full by the Corporation within sixty (60) days after a written claim pursuant to paragraph (d) of this Article VI has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standard of conduct which makes it permissible under the Act for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its board of directors, Independent Counsel or shareholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the Act, nor an actual determination by the Corporation (including its board of directors, Independent Counsel or shareholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct. If a determination shall have been made pursuant to this paragraph (e) that the claimant is entitled to indemnification, the Corporation shall be bound by such determination in any judicial proceeding commenced pursuant to this paragraph (e). The Corporation shall be precluded from asserting in any judicial proceeding commenced pursuant to this paragraph (e) that the procedures and presumptions of this Bylaw are not valid, binding and enforceable and shall stipulate in such proceeding that the Corporation is bound by all the provisions of this Bylaw.

(g) The Corporation may purchase (upon resolution duly adopted by the board of directors) and maintain insurance on behalf of any person who is or was a director, officer or employee of the Corporation, or is or was a director, officer or employee serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power or the obligation to indemnify him or her against such liability under the provisions of this Article VI or of the Act.

(h) To the extent that a director, officer or employee of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to herein or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

(i) Every such person shall be entitled, without demand by him or her upon the Corporation or any action by the Corporation, to enforce his or her right to such indemnity in an action at law against the Corporation. The right of indemnification and advancement of expenses conferred by this Article VI shall not be deemed exclusive of any rights to which any such person may now or hereafter be otherwise entitled under the Certificate of Incorporation, any separate indemnification agreement entered into by the Corporation and such person, any Bylaw, agreement, vote of the shareholders or Disinterested Directors or otherwise, and specifically, without limiting the generality of the foregoing, shall not be deemed exclusive of any rights pursuant to statute or otherwise, including the Act, of any such person in any such action, suit or proceeding to have assessed or allowed in his or her favor against the Corporation or otherwise, his or her costs and expenses incurred therein or in connection therewith or any part thereof. The right to indemnification and advancement of expenses conferred by this Article VI (i) shall be a contract right that vests at the time of such person's service to or at the request of the Corporation and (ii) cannot be terminated by the Corporation, the board of directors or the shareholders of the Corporation with respect to a person's service prior to the date of such termination. No repeal or modification of this Bylaw shall in any way diminish or adversely affect the rights of any current or former director, officer or employee of the Corporation hereunder in respect of any occurrence or matter arising prior to any such repeal or modification.

(j) The indemnification and advancement of expenses provided by or granted to this Article VI shall continue as to a person who has ceased to be a director, officer or employee and shall inure to the benefit of the heirs, executors and administrators of such person.

(k) Notwithstanding anything contained in this Article VI to the contrary, except for proceedings to enforce rights to indemnification (which shall be governed by Article VI(f)), the Corporation shall not be obligated to indemnify any director, officer or employee in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the board of directors.

(l) Any repeal or modification of this Article VI by the shareholders of the Corporation shall be prospective only and shall not adversely affect any rights to indemnification and to the advancement of expenses of a director, officer or employee of the Corporation existing

at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

(m) If any provision or provisions of this Article VI shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions of this Article VI (including, without limitation, all portions of this Article VI containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby: and (ii) to the fullest extent possible, the provisions of this Article VI (including without limitation, all portions of any Section of this Article VI containing an such provision held to be invalid, illegal or unenforceable that are not themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

(n) All rights and protection pursuant to this Article VI of any director, officer or employee shall immediately vest and be effective upon the election of such director or officer and the employment of such employee.

(o) The Corporation may, to the extent authorized from time to time by the board of directors, provide rights to indemnification and to the advancement of expenses to agents of the Corporation similar to those conferred in this Article VI to directors, officers and employees of the Corporation.

(p) To the extent that any director may have certain rights to indemnification, advancement of expenses and/or insurance provided by one or more persons with whom or which such director may be associated (a "Third-Party Indemnitor"), the Corporation hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to such persons are primary and any obligation of the Third-Party Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such persons are secondary), (ii) that it shall be required to advance the full amount of expenses incurred by such persons and shall be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and required by the terms of the Certificate of Incorporation or these Bylaws (or any other agreement between the Corporation and such persons), without regard to any rights such persons may have against the Third-Party Indemnitors, and (iii) that it that it irrevocably waives, relinquishes and releases the Third-Party Indemnitors from any and all claims against the Third-Party Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Corporation further agrees that no advancement or payment by the Third-Party Indemnitors on behalf of such persons with respect to any claim for which such persons have sought indemnification from the corporation shall affect the foregoing and the Third-Party Indemnitors shall be subrogated to the extent of such advancement or payment to all of the rights of recovery of such persons against the Corporation. The corporation and each such person agree that the Third-Party Indemnitors are express third party beneficiaries of the terms of this Article VI.

ARTICLE VII
Amendments

New Bylaws may be adopted, and these Bylaws may be amended, altered or repealed, in each case as provided by the Certificate of Incorporation and the Act.

[signature page follows]

I hereby certify that the foregoing is a full, true and correct copy of the Bylaws of Chesapeake Energy Corporation, an Oklahoma Corporation, as in effect on the date hereof.

Dated this 9th day of February, 2021.

/s/ James R. Webb

James R. Webb, Secretary

CREDIT AGREEMENT

dated as of February 9, 2021,

among

CHESAPEAKE ENERGY CORPORATION,

as Borrower,
MUFG BANK, LTD.,

as Administrative Agent,
MUFG UNION BANK, N.A.,

as Collateral Agent,
and

The Lenders and Other Parties Party Hereto

MUFG UNION BANK, N.A.,
BANK OF AMERICA, N.A.,
BMO CAPITAL MARKETS CORP.,
WELLS FARGO SECURITIES, LLC,
CITIBANK, N.A.,
JPMORGAN CHASE BANK, N.A.,

and

ROYAL BANK OF CANADA
as Joint Lead Arrangers and Joint Bookrunners

TABLE OF CONTENTS

ARTICLE V
INCREASED COSTS; BREAK FUNDING PAYMENTS; TAXES; ILLEGALITY

ARTICLE VI
CONDITIONS PRECEDENT

ARTICLE VII
REPRESENTATIONS AND WARRANTIES

ARTICLE VIII
AFFIRMATIVE COVENANTS

\

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ARTICLE X
EVENTS OF DEFAULT; REMEDIES

ARTICLE XI
THE AGENT

ARTICLE XII
MISCELLANEOUS

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Annexes, Exhibits and Schedules

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THIS **CREDIT AGREEMENT** dated as of February 9, 2021, is among CHESAPEAKE ENERGY CORPORATION, an Oklahoma corporation (the "Borrower"); each of the Lenders from time to time party hereto; MUFG BANK, LTD., as administrative agent for the Lenders (in such capacity, together with its successors in such capacity, the "Administrative Agent"); and MUFG UNION BANK, N.A., as collateral agent for the Lenders (in such capacity, together with its successors in such capacity, the "Collateral Agent").

RECITALS

A. Reference is made to that certain Amended and Restated Credit Agreement, dated as of September 12, 2018, among the Borrower, as borrower, MUFG BANK, LTD., as administrative agent, and the lenders and other parties from time to time party thereto (as amended by that certain First Amendment to Amended and Restated Credit Agreement, dated as of February 1, 2019, as further amended by that certain Second Amendment to Amended and Restated Credit Agreement, dated as of December 3, 2019, as further amended by that certain Third Amendment to Amended and Restated Credit Agreement, dated as of December 26, 2019, as further amended by that certain Fourth Amendment and Waiver to Amended and Restated Credit Agreement, dated as of June 12, 2020, and as otherwise amended, amended and restated, supplemented, restated or otherwise modified prior to the date hereof, the "Pre-Petition Credit Agreement").

B. On June 28, 2020 (the "Petition Date"), the Borrower and certain of its Subsidiaries (collectively, the "Debtors") filed voluntary petitions to commence cases (the "Chapter 11 Cases") under title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court") and continued in the possession of their assets and in the management of their businesses pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

C. On September 11, 2020, the Debtors filed the Joint Chapter 11 Plan of Reorganization of Chesapeake Energy Corporation and its Debtor Affiliates (as amended by the Amended Joint Chapter 11 Plan of Reorganization of Chesapeake Energy Corporation and Its Debtor Affiliates filed October 8, 2020, the Second Amended Joint Chapter 11 Plan of Reorganization of Chesapeake Energy Corporation and Its Debtor Affiliates filed October 29, 2020, the Third Amended Joint Chapter 11 Plan of Reorganization of Chesapeake Energy Corporation and Its Debtor Affiliates filed December 13, 2020, the Fourth Amended Joint Chapter 11 Plan of Reorganization of Chesapeake Energy Corporation and Its Debtor Affiliates filed December 27, 2020, and the Fifth Amended Joint Chapter 11 Plan of Reorganization of Chesapeake Energy Corporation and Its Debtor Affiliates filed January 12, 2021 and as supplemented by the Plan Supplement for the Second Amended Joint Chapter 11 Plan of Reorganization of Chesapeake Energy Corporation and Its Debtor Affiliates filed on November 23, 2020, the Amended Plan Supplement for the Second Amended Joint Chapter 11 Plan of December 12, 2020, the Second Plan Supplement for the Third Amended Joint Chapter 11 Plan of Reorganization of Chesapeake Energy Corporation and Its Debtor Affiliates filed on December 15, 2020 and the Third Plan Supplement for the Fourth Amended Joint Chapter 11 Plan of Reorganization of Chesapeake Energy Corporation and Its Debtor Affiliates filed on January 7, 2021, the "Plan of Reorganization") in the Chapter 11 Cases and the accompanying Disclosure Statement (as defined in the Plan of Reorganization).

D. On January 16, 2021, the Bankruptcy Court entered the Confirmation Order confirming the Plan of Reorganization.

E. The Borrower has requested that the Lenders provide certain revolving loans to and extensions of credit on behalf of the Borrower and that the Issuing Banks provide Letters of Credit.

F. The Lenders have indicated their willingness to lend and to participate in Letters of Credit and the Issuing Banks have indicated their willingness to issue Letters of Credit, in each case subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, of the representations, warranties, covenants and agreements contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS AND ACCOUNTING MATTERS

Section 1.01 **Terms Defined Above**. As used in this Agreement, each term defined above has the meaning indicated above.

Section 1.02 **Certain Defined Terms**. As used in this Agreement, the following terms have the meanings specified below:

"ABR" means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Effective Rate *plus* 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by the Administrative Agent as its "prime rate" and (c) LIBOR for a one-month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) *plus* 1.0%; but, for the avoidance of doubt, for purposes of calculating LIBOR pursuant to clause (c) above, LIBOR for any day shall be based on the rate per annum determined by the Administrative Agent at approximately 11:00 a.m. (London time) on such day by reference to the rate appearing on the Reuters Screen LIBOR01 Page (or any successor page or any successor service, or any substitute page or substitute for such service, providing rate quotations comparable to the Reuters Screen LIBOR01 Page, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to dollar deposits in the London interbank market) for a period equal to one-month and such rate shall in no event be less than zero for the purposes of this Agreement. The "prime rate" is a rate set by the Administrative Agent based upon various factors, including the Administrative Agent's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in the ABR due to a change in such rate announced by the Administrative Agent, in the Federal Funds Effective Rate or in the one-month LIBOR shall take effect at the opening of business on the day specified in the public announcement of such change. If the ABR is being used as an alternate rate of interest pursuant to Section 3.03 hereof, then the ABR shall be the greater of clause (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the ABR shall be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement.

"ABR Loan" means each Loan bearing interest based on the ABR.

"Acceptable Collateral Trust Agreement" means, with respect to any Indebtedness incurred pursuant to Section 9.02(p)(B), one or more agreements among the Borrower, the Collateral Agent and the holders of such Indebtedness or their representative, as such agreement may be reasonably acceptable to the Administrative Agent, the Collateral Agent and the Majority Lenders.

"Acceptable Hedge Intercreditor Agreement" means, with respect to any Swap Agreement entered into with an Approved Counterparty described in clause (b) of the definition thereof, one or more agreements among the Borrower, the Collateral Agent and the Approved Counterparty under such Swap Agreement, as such agreement may be reasonably acceptable to the Administrative Agent, the Collateral Agent and the Majority Lenders.

"Acceptable Intercreditor Agreement" means, with respect to any Indebtedness incurred pursuant to Section 9.02(p)(A), one or more agreements among the Borrower, the Collateral Agent and the holders of such Indebtedness or their representative, as such agreement may be reasonably acceptable to the Administrative Agent, the Collateral Agent and the Majority Lenders.

"Account Control Agreement" means a control agreement, in form and substance reasonably satisfactory to the Collateral Agent, which grants the Collateral Agent "control" as defined in the UCC in effect in the applicable jurisdiction over any Deposit Account, Securities Account or Commodities Account maintained by any Credit Party, in each case, among the Collateral Agent, the applicable Credit Party and the applicable financial institution at which such Deposit Account, Securities Account or Commodities Account is maintained.

"Act" has the meaning assigned to such term in Section 12.15.

"Additional Lender" has the meaning given to such term in Section 2.06(c)(i).

"Additional Lender Certificate" has the meaning given to such term in Section 2.06(c)(ii)(K).

"Adjusted Consolidated Net Tangible Assets" means (without duplication), as of the date of determination, (a) the sum of (i) discounted future net revenue from proved oil and gas reserves of the Borrower and its Subsidiaries calculated in accordance with SEC guidelines before any state or federal income taxes, as estimated by petroleum engineers (which may include the Borrower's internal engineers) in a reserve report prepared as of the end of the Borrower's most recently completed fiscal year or, at the Borrower's option, a reserve report prepared as of the end of the most recently completed fiscal quarter (if such reserve report has been provided to the Administrative Agent), as increased by, as of the date of determination, the discounted future net revenue of (A) estimated proved oil and gas reserves of the Borrower and its Subsidiaries attributable to any acquisition consummated since the date of such year-end or quarterly reserve report, as applicable, and (B) estimated proved oil and gas reserves of the Borrower and its Subsidiaries attributable to extensions, discoveries and other additions and upward revisions of

estimates of proved oil and gas reserves due to exploration, development or exploitation, production or other activities conducted or otherwise occurring since the date of such year-end or quarterly reserve report, as applicable, which, in the case of clauses (A) and (B), would, in accordance with standard industry practice, result in such increases as calculated in accordance with SEC guidelines (utilizing the prices utilized in such year-end or quarterly reserve report, as applicable), and decreased by, as of the date of determination, the discounted future net revenue of, (C) estimated proved oil and gas reserves of the Borrower and its Subsidiaries produced or Disposed of since the date of such year-end or quarterly reserve report, as applicable, and (D) reductions in the estimated oil and gas reserves of the Borrower and its Subsidiaries since the date of such year-end or quarterly reserve report, as applicable, attributable to downward revisions of estimates of proved oil and gas reserves due to exploration, development or exploitation, production or other activities conducted or otherwise occurring since the date of such year-end or quarterly reserve report, as applicable, which, in the case of clauses (C) and (D), would, in accordance with standard industry practice, result in such decreases as calculated in accordance with SEC guidelines (utilizing the prices utilized in such year-end or quarterly reserve report, as applicable,); *but*, in the case of each of the determinations made pursuant to clauses (A) through (D), such increases and decreases may be estimated by the Borrower's engineers, (ii) the capitalized costs that are attributable to Oil and Gas Properties of the Borrower and its Subsidiaries to which no proved oil and gas reserves are attributable, based on the Borrower's books and records as of a date no earlier than the date of the Borrower's latest annual or quarterly financial statements, (iii) the Net Working Capital on a date no earlier than the date of the Borrower's latest annual or quarterly financial statements and (iv) the greater of (I) the net book value on a date no earlier than the date of the Borrower's latest annual or quarterly financial statements, and (II) the appraised value, as estimated by independent appraisers, of other tangible assets (including Investments in unconsolidated Subsidiaries) of the Borrower and its Subsidiaries, as of a date no earlier than the date of the Borrower's latest audited financial statements (but the Borrower shall not be required to obtain any appraisal of assets), ***minus*** (b) the sum of (i) minority interests, (ii) any gas balancing liabilities of the Borrower and its Subsidiaries reflected as a long-term liability in the Borrower's latest annual or quarterly financial statements, (iii) the discounted future net revenue, calculated in accordance with SEC guideline (utilizing the prices utilized in the Borrower's year-end or quarterly reserve report, as applicable), attributable to reserves which are required to be delivered to third parties to fully satisfy the obligations of the Borrower and its Subsidiaries with respect to VPPs on the schedules specified with respect thereto, (iv) the discounted future net revenue, calculated in accordance with SEC guidelines, attributable to reserves subject to Dollar-Denominated Production Payments which, based on the estimates of production included in determining the discounted future net revenue specified in (a) (i) above (utilizing the same prices utilized in the Borrower's year-end or quarterly reserve report, as applicable), would be necessary to fully satisfy the payment obligations of the Borrower and its Subsidiaries with respect to Dollar-Denominated Production Payments on the schedules specified with respect thereto, and (v) the discounted future net revenue, calculated in accordance with SEC guidelines (utilizing the same prices utilized in the Borrower's year-end or quarterly reserve report, as applicable), attributable to reserves subject to participation interests, overriding royalty interests or other interests of third parties, pursuant to participation, partnership, vendor financing or other agreements then in effect, or which otherwise are required to be delivered to third parties. For the avoidance of doubt, "reserves" shall include any reserves applicable to natural gas liquids. As used in this definition, "Net Working Capital" means (i) all Current Assets of the Borrower and its

Subsidiaries, *minus* (ii) all Current Liabilities of the Borrower and its Subsidiaries, except Current Liabilities included in Indebtedness. It is agreed and understood that, once the audited balance sheet of the Borrower and its consolidated Subsidiaries giving effect to fresh start accounting becomes available, "Adjusted Consolidated Net Tangible Assets" shall be determined giving pro forma effect to fresh start accounting.

"Adjusted LIBO Rate" means, with respect to any Borrowing of LIBOR Loans for any Interest Period, an interest rate *per annum* (rounded upwards, if necessary, to the next 1/16 of 1%) equal to LIBOR for such Interest Period *multiplied by* the Statutory Reserve Rate.

"Administrative Agent" has the meaning set forth in the preamble hereto.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"Affected Financial Institution" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

"Affected Loans" has the meaning assigned to such term in Section 5.06.

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agents" means, collectively, the Administrative Agent, the Collateral Agent and, as the context requires, any sub-agents, syndication agents, documentation agents or sub-agents, hereunder that may from time to time be designated by the Administrative Agent and/or the Borrower, as applicable.

"Aggregate Credit Exposure" means, at any time, the aggregate Credit Exposure of all the Lenders at such time.

"Aggregate Revolving Exposure" means, at any time, the aggregate Revolving Credit Exposures of all the Lenders.

"Agreement" means this Credit Agreement, as the same may from time to time be amended, modified, supplemented or restated.

"Ancillary Document" has the meaning assigned to such term in Section 12.06(c).

"Anti-Corruption Laws" means all laws, rules, and regulations applicable to the Borrower or any of its Affiliates from time to time concerning or relating to money-laundering, bribery or corruption, including the FCPA.

"Applicable Margin" means, for any day, with respect to any ABR Loan or LIBOR Loan, as the case may be, the rate *per annum* set forth in the Loan Limit Utilization Grid below based upon the Loan Limit Utilization Percentage then in effect:

Loan Limit Utilization Grid					
Loan Limit Utilization Percentage	≤25%	>25 %	>50%	>75%	>90%
		≤50%	≤75%	≤90%	
LIBOR Loans	3.25%	3.50%	3.75%	4.00%	4.25%
ABR Loans	2.25%	2.50%	2.75%	3.00%	3.25%

Each change in the Applicable Margin shall apply during the period commencing on the effective date of such change and ending on the date immediately preceding the effective date of the next such change, *provided*, *however*, that if the Borrower fails to timely deliver a Reserve Report pursuant to Section 8.12(a), the "Applicable Margin" means the rate *per annum* set forth on the grid when the Loan Limit Utilization Percentage is at its highest level (it being understood and agreed that upon delivery of the Reserve Report, such Applicable Margin shall be automatically adjusted to the rate *per annum* corresponding to the appropriate Loan Limit Utilization Percentage level based on such Reserve Report).

"Applicable Percentage" means, with respect to any Lender, at any time of determination (a) with respect to Tranche A Loans or LC Exposures, a percentage equal to a fraction the numerator of which is such Lender's Tranche A Commitments and the denominator of which is the aggregate Tranche A Commitments (*provided* that, if the Tranche A Commitments have terminated or expired, the Applicable Percentages shall be determined based upon such Lender's share of the Aggregate Revolving Exposure at time) and (b) with respect to the Tranche B Loans, a percentage equal to a fraction the numerator of which is the aggregate outstanding principal amount of the Tranche B Loans of such Lender and the denominator of which is the aggregate outstanding principal amount of the Tranche B Loans of all Tranche B Lenders.

"Approved Counterparty" means (a) any Lender or any Affiliate of a Lender and (b) any other Person if such Person or its credit support provider has a long term senior unsecured debt rating of BBB+ (or its equivalent) or higher by S&P and Baa1 (or its equivalent) or higher by Moody's at the time such Person entered into the applicable Swap Agreement.

"Approved Electronic Platform" has the meaning assigned to such term in Section 11.03.

"Approved Fund" means, with respect to any Lender, any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities and is administered or managed by (i) such Lender, (ii) an Affiliate of such Lender, or (iii) an entity or an Affiliate of an entity that administers, advises or manages such Lender.

"Approved Petroleum Engineers" means (a) Schlumberger N.V., (b) Netherland, Sewell & Associates, Inc., (c) Ryder Scott Company Petroleum Consultants, L.P., (d) Cawley, Gillespie & Associates, Inc., (e) LaRoche Petroleum Consultants, Ltd., or (f) any other independent petroleum engineers chosen by Borrower and reasonably acceptable to the Administrative Agent.

"Arrangers" means, collectively, MUFG Union Bank, N.A., Bank of America, N.A., BMO Capital Markets Corp., Wells Fargo Securities, LLC, Citibank, N.A., JPMorgan Chase Bank, N.A. and Royal Bank of Canada in their capacities as joint lead arrangers and joint bookrunners hereunder.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 12.04(b)), and accepted by the Administrative Agent, in the form of Exhibit F or any other form approved by the Administrative Agent.

"Availability" means, as of any date, an amount equal to (a) the Loan Limit less (b) the Aggregate Credit Exposures of all Lenders.

"Availability Period" means the period from and including the Effective Date to but excluding the Tranche A Termination Date.

"Available Borrowing Base" means, as of any date, an amount equal to the remainder of (a) the Borrowing Base then in effect as determined in accordance with Section 2.07, as may be adjusted from time to time pursuant to the Borrowing Base Adjustment Provisions, *minus* (b) the amount of Tranche B Loans then outstanding, minus (c) the amount of all Other Secured Debt then outstanding, in each case after giving effect to all incurrences or repayments of Indebtedness that have occurred or will occur on such date.

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to clause (e) of Section 3.03.

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

"Bail-In Legislation" means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"Bank Price Deck" means the Administrative Agent's most recent internal price deck on a forward curve basis for each of oil, natural gas and other Hydrocarbons, as applicable, furnished to the Borrower by the Administrative Agent from time to time in accordance with the terms of this Agreement.

"Bankruptcy Code" has the meaning assigned to such term in the recitals hereto.

"Bankruptcy Court" has the meaning assigned to such term in the recitals hereto.

"Bankruptcy Event" means, with respect to any Person, such Person becomes the subject of a voluntary or involuntary bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment or has had any order for relief in such proceeding entered in respect thereof; *provided* that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, unless such ownership interest results in or provides such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permits such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

"Benchmark" means, initially, LIBOR; *provided* that if a Benchmark Transition Event, a Term SOFR Transition Event, or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to LIBOR or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (b) of Section 3.03.

"Benchmark Replacement" means, for any Available Tenor, (a) with respect to any Benchmark Transition Event or Early Opt-in Election, the first alternative set forth in the order below that can be determined by the Administrative Agent, for the applicable Benchmark Replacement Date:

(1) the sum of: (A) Term SOFR and (B) the related Benchmark Replacement Adjustment;

(2) the sum of: (A) Daily Simple SOFR and (B) the related Benchmark Replacement Adjustment;

(3) the sum of: (A) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for U.S. dollar-denominated syndicated credit facilities at such time and (B) the related Benchmark Replacement Adjustment;

(b) with respect to any Term SOFR Transition Event, the sum of (i) Term SOFR and (ii) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (a)(1) or clause (b), the applicable Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion and approved by the Borrower; and *provided further* that any Benchmark Replacement shall meet the standards set

forth in Proposed United States Treasury Regulations under Section 1.1001-6 (or any successor United States Treasury Regulations or other official IRS guidance promulgated that supersedes such Proposed United States Treasury Regulations) so as not to be treated as a "modification" (and therefor an exchange) of any loans for purposes of Treasury Regulations Section 1.1001-3. If the Benchmark Replacement as determined pursuant to clause (a)(1), (a)(2) or (a)(3) or clause (b) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

"Benchmark Replacement Adjustment" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

(1) for purposes of clauses (a)(1) and (a)(2) of the definition of "Benchmark Replacement," the first alternative set forth in the order below that can be determined by the Administrative Agent in consultation with the Borrower:

(a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor;

(b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor;

(2) for purposes of clause (a)(3) of the definition of "Benchmark Replacement," the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities; and

(3) for purposes of clause (b) of the definition of "Benchmark Replacement," the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Available Tenor of USD LIBOR with a SOFR-based rate;

provided that, (x) in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Administrative Agent in its reasonable discretion and (y) if the then-current Benchmark is a term rate, more than one tenor of such Benchmark is available as of the applicable Benchmark Replacement Date and the applicable Unadjusted Benchmark Replacement that will replace such Benchmark in accordance with Section 3.03 will not be a term rate, the Available Tenor of such Benchmark for purposes of this definition of "Benchmark Replacement Adjustment" shall be deemed to be, with respect to each Unadjusted Benchmark Replacement having a payment period for interest calculated with reference thereto, the Available Tenor that has approximately the same length (disregarding business day adjustments) as such payment period; and *provided further* that any Benchmark Replacement Adjustment shall meet the standards set forth in Proposed United States Treasury Regulations under Section 1.1001-6 (or any successor United States Treasury Regulations or other official IRS guidance promulgated that supersedes such Proposed United States Treasury Regulations) so as not to be treated as a "modification" (and therefor an exchange) of any loans for purposes of Treasury Regulations Section 1.1001-3.

"Benchmark Replacement Conforming Changes" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "ABR," the definition of "Business Day," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent reasonably decides, after consultation with the Borrower may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent reasonably decides, after consultation with the Borrower is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents); *provided* that any Benchmark Replacement Conforming Changes shall meet the standards set forth in Proposed United States Treasury Regulations under Section 1.1001-6 (or any successor United States Treasury Regulations or other official IRS guidance promulgated that supersedes such Proposed United States Treasury Regulations) so as not to be treated as a "modification" (and therefor an exchange) of any loans for purposes of Treasury Regulations Section 1.1001-3.

"Benchmark Replacement Date" means the earliest to occur of the following events with respect to the then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event," the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof);

(2) in the case of clause (3) of the definition of "Benchmark Transition Event," the date of the public statement or publication of information referenced therein;

(3) in the case of a Term SOFR Transition Event, the date that is thirty (30) days after the Administrative Agent has provided a Term SOFR Notice to the Lenders and the Borrower pursuant to clause (b)(ii) of Section 3.03; or

(4) in the case of an Early Opt-in Election, the sixth (6^{th}) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5^{th}) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Majority Lenders.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Transition Event" means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, *provided* that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, *provided* that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative.

For the avoidance of doubt, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Unavailability Period" means the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.03 and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.03.

"Beneficial Ownership Certification" means a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"Benefit Plan" means any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in and subject to Section 4975 of the Code or, (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

"BHC Act Affiliate" of a party means an 'affiliate' (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"Board" means the Board of Governors of the Federal Reserve System of the United States of America or any successor Governmental Authority.

"Board of Directors" means, as to any Person, the board of directors or other governing body of such Person, or if such Person is owned or managed by a single entity, the board of directors or other governing body of such entity.

"Borrower" has the meaning assigned to such term in the preamble hereto.

"Borrowing" means (a) any Tranche A Borrowing and (b) Tranche B Loans of the same Type, made, on the same date and, in the case of LIBOR Loans, as to which a single Interest Period is in effect.

"Borrowing Base" means at any time an amount equal to the amount determined in accordance with Section 2.07, as the same may be redetermined or adjusted from time to time pursuant to the Borrowing Base Adjustment Provisions. As of the Effective Date, the Borrowing Base shall be $2,500,000,000.

"Borrowing Base Adjustment Provisions" means, collectively, Section 2.07(f), Section 2.07(g), Section 2.07(h) and any other provision which adjusts (as opposed to redetermines) the amount of the Borrowing Base, as applicable.

"Borrowing Base Deficiency" occurs if at any time Aggregate Credit Exposures exceed the Available Borrowing Base. The amount of any Borrowing Base Deficiency at the time in question is the amount (if any) by which the Aggregate Credit Exposures exceed the Available Borrowing Base then in effect.

"Borrowing Base Property" means, at any time, any Oil and Gas Property of the Borrower and the Guarantors to which Proved Reserves were attributed in the Reserve Report most recently delivered to the Administrative Agent pursuant to Section 8.12.

"Borrowing Base Value" means, with respect to any Borrowing Base Property or any Swap Agreement in respect of commodities, the value attributed thereto by the Administrative Agent for the purpose of determining the Borrowing Base.

"Borrowing Request" means a request by the Borrower, substantially in the form of Exhibit B or any other form approved by the Administrative Agent, for a Borrowing in accordance with Section 2.03.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed, and if such day relates to a Borrowing or continuation of, a payment or prepayment of principal of or interest on, or a conversion of or into, or the Interest Period for, a LIBOR Loan or a notice by the Borrower with respect to any such Borrowing or continuation, payment, prepayment, conversion or Interest Period, any day which is also a day on which banks are open for dealings in dollar deposits in the London interbank market.

"Capital Leases" means, in respect of any Person, all leases which shall have been, or should have been, in accordance with GAAP as in effect prior to the adoption of ASU No. 2016-02 "Leases (Topic 842)" and ASU No. 2018-11 "Leases (Topic 842)", recorded as finance or capital leases on the balance sheet of the Person liable (whether contingent or otherwise) for the payment of rent thereunder. Notwithstanding the foregoing, any lease that would not have been recorded as a Capital Lease if it had been entered into prior to the adoption of ASU No. 2016-02 "Leases (Topic 842)" and ASU No. 2018-11 "Leases (Topic 842)" shall not be a Capital Lease whether or not so designated in accordance with GAAP as in effect at the time of the execution of such lease.

"Cash Collateral" has the meaning assigned such term in Section 2.08(j)(ii).

"Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent (as a first priority, perfected security interest), for the benefit of the applicable Issuing Bank, cash or deposit account balances, at a location and pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent. "Cash Collateralized", "Cash Collateralizing" and "Cash Collateralization" have correlative meanings.

"Casualty Event" means any loss, casualty or other insured damage to, or any nationalization, taking under power of eminent domain or by condemnation or similar proceeding of, any Property of the Borrower or any of its Restricted Subsidiaries.

"CFTC Hedging Obligation" means any Obligation in respect of any agreement, contract, confirmation or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"Change in Control" means:

(a) any Person, entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act), other than the Permitted Investors and any employee benefit plan of such person or its subsidiaries, any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan, shall at any time have acquired direct or indirect beneficial ownership of voting power of the outstanding Stock and Stock Equivalents of the Borrower having more than the greater of (i) 35% of the ordinary voting power for the election of directors of the Borrower, and (ii) the percentage of the ordinary voting power for the election of directors of the Borrower owned in the aggregate, directly or indirectly, beneficially, by the Permitted Investors; *provided* that so long as the Borrower is a wholly-owned subsidiary of any Parent Entity, no Person, entity or "group" shall be deemed to be or become a beneficial owner of more than 35% of the total voting power of the voting Stock of the Borrower unless such Person, entity or "group" shall be or become a beneficial owner of more than 35% of the total voting power of the voting Stock of such Parent Entity (other than a Parent Entity that is a wholly-owned subsidiary of another Parent Entity);

(b) occupation of a majority of the seats (other than vacant seats) on the Board of Directors of the Borrower by individuals who were not (1) directors of the Borrower on the Effective Date, (2) nominated or approved by the Board of Directors of the Borrower, or (3) appointed by directors so nominated or approved; or

(c) a "Change in Control" (as defined in the documentation for any Material Indebtedness) (or any other defined term describing a similar event or having a similar purpose or meaning) shall have occurred and as a result thereof the maturity of such Material Indebtedness is accelerated, the obligor on such Material Indebtedness is obligated to offer to Redeem such Material Indebtedness, or the obligee on such Material Indebtedness shall otherwise have the right to require the obligor thereon to Redeem such Material Indebtedness.

As used in this definition, "beneficial ownership" (which may be direct or indirect) has the meaning provided in Rules 13(d)-3 and 13(d)-5 under the Exchange Act.

"Change in Law" means the occurrence after the date of this Agreement of (a) the adoption of or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority, or (c) compliance by any Lender or Issuing Bank (or, for purposes of Section 5.01(b), by any lending office of such Lender or by such Lender's or Issuing Bank's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; *provided* that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith or in the implementation thereof, and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking

Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall, in each case, be deemed to be a "Change in Law," regardless of the date enacted, adopted, issued or implemented.

"Chapter 11 Cases" has the meaning assigned to such term in the recitals hereto.

"Class", when used in reference to (a) any Loan or Borrowing, refers to whether such Loan or the Loans comprising such Borrowing, are Tranche A Loans or a Tranche B Loan, (b) any Commitment, whether such Commitment is a Tranche A Commitment or a Tranche B Commitment, and (c) any Lender, refers to whether such Lender has a Loan or Commitment of a particular Class.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute.

"Collateral" has the meaning provided for such term or such similar term in each of the Security Instruments; *provided* that with respect to real property that is subject to mortgages, "Collateral" shall also mean "Mortgaged Properties".

"Collateral Account" has the meaning assigned such term in Section 2.08(j)(ii).

"Collateral Agent" has the meaning set forth in the preamble hereto.

"Collateral Requirements" means the delivery of Security Instruments sufficient to satisfy the collateral requirements set forth in Section 8.14, including:

(a) mortgage liens on Proved Reserves of the Credit Parties encumbering at least the Minimum Collateral Coverage Percentage of the PV-10 of the Borrowing Base Properties;

(b) a pledge by the Credit Parties of all Stock and Stock Equivalents of all Subsidiaries of the Borrower to the extent such Stock and Stock Equivalents are not Excluded Stock; and

(c) with respect to substantially all other assets of the Credit Parties (including all as-extracted collateral arising from the Borrowing Base Properties, Swap Agreements and personal property, including general intangibles) other than Excluded Property, first priority (but other Liens which are permitted to exist and attach pursuant to Section 9.03 may attach with the priority as may exist at law or otherwise), perfected Liens and security interests on such assets of the Credit Parties; but the Credit Parties shall not be required to take any action to perfect a Lien on any such assets securing Obligations unless such perfection may be accomplished by (A) the filing of a UCC-1 financing statement in the obligor's jurisdiction of formation or in the case of as-extracted collateral and goods that are or are to become fixtures in connection with a mortgage, the filing of a financing statement filed as a fixture filing or as a financing statement covering such property in the county in which such fixtures are located, (B) delivery of certificates representing any pledged equity consisting of certificated securities, in each case, with appropriate endorsements or transfer powers, (C) granting the Collateral Agent control (within the meaning of the UCC) over any pledged equity consisting of uncertificated securities, or (D) granting the Collateral Agent control (within the meaning of the UCC) over any Deposit Accounts (other than Excluded Accounts) and Securities Accounts (other than Excluded Accounts) by entering into (i) a control agreement with,

and reasonably satisfactory to, the Collateral Agent and the account bank for such Deposit Account or securities intermediary for such Securities Account, as applicable, or (ii) maintaining such Deposit Account with the Collateral Agent or any sub-agent designated by the Collateral Agent pursuant to this Agreement.

"Commitment" means, (a) with respect to each Lender that is a Lender on the Effective Date, the amounts set forth opposite such Lender's name on Annex I as such Lender's "Tranche A Commitment" and "Tranche B Commitment," and (b) in the case of any Lender that becomes a Lender after the Effective Date, the sum of the amounts specified as such Lender's "Tranche A Commitment" in the Assignment and Assumption pursuant to which such Lender assumed a portion of the Total Tranche A Commitment, in each case, as the same may be changed from time to time pursuant to the terms of this Agreement.

"Commitment Fee Rate" means, for any day, a rate equal to 0.50% *per annum*.

"Commitment Increase Certificate" has the meaning assigned to such term in Section 2.06(c)(ii)(J).

"Commitment Letter" means that certain Commitment Letter, dated as of June 28, 2020, among the Borrower, MUFG Union Bank, N.A., as lead arranger and a commitment party and the commitment parties party thereto.

"Commodities Account" shall have the meaning set forth in Article 9 of the UCC.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 *et seq*.), as amended from time to time, and any successor statute, and the rules and regulations promulgated thereunder, and the application or official interpretation of any thereof.

"Communications" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of the Borrower or any Guarantor, including Company Materials, pursuant to any Loan Document or the transactions contemplated therein which is distributed by the Administrative Agent, any Lender or any Issuing Bank by means of electronic communications pursuant to this Agreement, including through an Approved Electronic Platform.

"Company Materials" has the meaning set forth in Section 8.01.

"Confirmation Order" means the order of the Bankruptcy Court entered January 16, 2021, Case 20-33233, Docket Number 2915, confirming the Plan of Reorganization, which order *inter alia* authorized and approved the Debtors' entry into and performance under this Agreement.

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Consolidated First Lien Indebtedness" shall mean for Borrower and the other Credit Parties, the sum of the following, as of the date of measurement:

(a) the outstanding principal balance of the Loans, *plus*

(b) the amount of all drawn letters of credit issued for the account of such Person (or for which such Person is liable) and without duplication, all reimbursement or payment obligations with respect to drawn letters of credit and other similar instruments issued by such Person (or for which such Person is liable) (to the extent not cash collateralized or backstopped by a letter of credit or similar instrument), *plus*

(c) the principal portion of Indebtedness attributable to Capital Leases and Indebtedness secured by purchase money Liens as of the date of measurement, *plus*

(d) the principal portion of other secured Indebtedness for borrowed money of the Credit Parties as of the date of measurement that is then secured by Liens on Collateral that are *pari passu* or senior to the Liens securing the Obligations.

"Consolidated First Lien Net Indebtedness" means, at any date, (a) the Consolidated First Lien Indebtedness *minus* (b) the lesser of (1) $100,000,000, and (2) the total collected balances of unencumbered cash on hand and cash equivalents at such time that is maintained in any Deposit Accounts or Securities Accounts of the Borrower or any other Credit Party covered by an Account Control Agreement; *provided* that cash or cash equivalents that would appear as "restricted" on a consolidated balance sheet or would be encumbered because such cash or cash equivalents is subject to an Account Control Agreement in favor of the Collateral Agent (and any junior lien creditor subject to an Acceptable Intercreditor Agreement, as applicable) shall be deemed to be unrestricted and unencumbered for purposes hereof.

"Consolidated First Lien Net Leverage Ratio" means, as of the last day of each fiscal quarter of the Borrower, the ratio of (a) the Consolidated First Lien Net Indebtedness as of such day to (b) EBITDAX for the Rolling Period ending on such day.

"Consolidated Net Income" means with respect to the Group Members, for any period, the consolidated net income (or loss) of the Group Members, determined on a consolidated basis in accordance with GAAP; but there shall be excluded, without duplication, (a) the income (or loss) of any Person (other than a Group Member) in which any Group Member has an ownership interest and any income represented by any dividends, distributions or proceeds of redemptions of Stock and Stock Equivalents in respect of any Person (other than a Group Member) in which a Group Member has an ownership interest, except, in each case, to the extent of the amount of cash dividends and other distributions actually paid to any Group Member during such period, and (b) the undistributed earnings of any Group Member to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any contractual obligation (other than under any Loan Document) or Requirement of Law applicable to such Group Member; but any non-cash income attributable to cancellation or early extinguishment of any Indebtedness of any Group Member shall be excluded in calculating Consolidated Net Income and EBITDAX.

"Consolidated Secured Indebtedness" means, as of any date of determination, the total of all Secured Indebtedness of the Borrower and the other Credit Parties determined on a consolidated basis in accordance with GAAP.

"Consolidated Secured Indebtedness Coverage Ratio" means, as of any date of calculation, the ratio of (a) Total PDP PV-10 as of the "as of" date of the most recently delivered Reserve Report to (b) Consolidated Secured Net Indebtedness as of the applicable Coverage Ratio Test Date.

"Consolidated Secured Net Indebtedness" means, at any date, (a) Consolidated Secured Indebtedness *minus* (b) the lesser of (1) $100,000,000 and (2) the total collected balances in unencumbered cash on hand and cash equivalents at such time that is maintained in any Deposit Accounts or Securities Accounts of the Borrower or any other Credit Party covered by an Account Control Agreement; *provided* that cash or cash equivalents that would appear as "restricted" on a consolidated balance sheet or would be encumbered because such cash or cash equivalents is subject to an Account Control Agreement in favor of the Collateral Agent (and any junior lien creditor subject to an Acceptable Intercreditor Agreement, as applicable) shall be deemed to be unrestricted and unencumbered for purposes hereof.

"Consolidated Total Indebtedness" means, as of any date of determination, without duplication, Indebtedness of the Group Members of the type described in clauses (a), (b), (c), (d), (e), (g) (excluding for the avoidance of doubt Guarantee Obligations in respect to contingent obligations of the kind referred to in clause (f)) and (h) (excluding for the avoidance of doubt contingent obligations of the kind referred to in clause (f) secured by a Lien on property) of the definition of Indebtedness as determined on a consolidated basis in accordance with GAAP.

"Consolidated Total Net Indebtedness" means, at any date, (a) the Consolidated Total Indebtedness ***minus*** (b) the lesser of (1) $100,000,000 and (2) the total collected balances in unencumbered cash on hand at such time that is maintained in any Deposit Accounts or Securities Accounts of the Borrower or any other Credit Party covered by an Account Control Agreement; *provided* that cash or cash equivalents that would appear as "restricted" on a consolidated balance sheet or would be encumbered because such cash or cash equivalents is subject to an Account Control Agreement in favor of the Collateral Agent (and any junior lien creditor subject to an Acceptable Intercreditor Agreement, as applicable) shall be deemed to be unrestricted and unencumbered for purposes hereof.

"Consolidated Total Net Leverage Ratio" means, as of any date of calculation, the ratio of (a) Consolidated Total Net Indebtedness as of such date to (b) EBITDAX for the Rolling Period ending on such date.

"Contractual Requirement" has the meaning set forth in Section 7.03.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Corresponding Tenor" with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding Business Day adjustment) as such Available Tenor.

"Coverage Ratio Test Date" means each date of delivery by the Borrower to the Administrative Agent and the Lenders of each Reserve Report required by Section 8.12(a), commencing with the delivery of the Reserve Report to be delivered on or about September 1, 2021 in accordance with Section 8.12(a).

"Covered Entity" means any of the following:

(a) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(b) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(c) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Covered Party" has the meaning set forth in Section 12.18.

"Credit Exposure" means, as to any Lender at any time, the sum of (a) such Lender's Revolving Credit Exposure at such time *plus* (b) an amount equal to the aggregate principal amount of such Lender's Tranche B Loans outstanding at such time.

"Credit Parties" means, collectively, the Borrower and the Guarantors and each, individually, a "Credit Party".

"Current Assets" means, as of any date of determination, without duplication, the sum of all amounts that would, in accordance with GAAP, be set forth opposite the caption "total current assets" (or any like caption) on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries at such date, *plus* the Availability as of such date, but excluding all non-cash assets under Statements of Financial Accounting Standards No. 133 or Accounting Standards Codification Topic No. 815.

"Current Liabilities" means, as of any date of determination, without duplication, the sum of all amounts that would, in accordance with GAAP, be set forth opposite the caption "total current liabilities" (or any like caption) on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries on such date, but excluding (a) all non-cash obligations under Statements of Financial Accounting Standards No. 133 or Accounting Standards Codification Topic No. 815 and (b) the current portion of the then outstanding aggregate principal amount of the Loans under this Agreement and the current portion of other long-term Indebtedness.

"Current Ratio" means, for any date of determination, the ratio of (a) Current Assets as of such date to (b) Current Liabilities as of such date.

"Daily Simple SOFR" means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining "Daily Simple SOFR" for syndicated business loans; *provided*, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

"Debtors" has the meaning assigned to such term in the recitals hereto.

"Default" means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"Defaulting Lender" means any Lender that (a) has failed, within two (2) Business Days of the date required to be funded or paid, to (i) fund all or any portion of its Loans, (ii) fund all or any portion of its participations in Letters of Credit or (iii) pay over to any Credit Party any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender's good faith determination that a condition precedent to funding (specifically identified and including the particular Default, if any) has not been satisfied, (b) has notified the Borrower or any Credit Party in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender's good faith determination that a condition precedent (specifically identified and including the particular Default, if any) to funding a Loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three (3) Business Days after request by a Credit Party, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations as of the date of certification) to fund prospective Loans and participations in then outstanding Letters of Credit under this Agreement; *provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon such Credit Party's receipt of such certification in form and substance satisfactory to it and the Administrative Agent, or (d) has, or has a Lender Parent that has, become the subject of (A) a Bankruptcy Event, or (B) a Bail-In Action; provided that no Lender shall be deemed a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interests in any Lender or any Person that directly or indirectly controls such Lender by a Governmental Authority or an instrumentality thereof so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

"Deficiency Date" has the meaning assigned to such term in Section 3.04(c)(ii).

"Deposit Account" shall have the meaning set forth in Article 9 of the UCC.

"DIP Credit Agreement" means that certain Senior Secured Super-Priority Debtor-in-Possession Credit Agreement, dated as of July 1, 2020, among the Borrower, as a debtor and debtor in possession, as the borrower, the other debtors party thereto from time to time, as debtors and debtors in possession, as guarantors, MUFG Union Bank, N.A., as the agent, and the lenders from time to time party thereto, as amended, supplemented, restated, replaced or modified from time to time.

"DIP Lenders" has the meaning given to the term "Lenders" in the DIP Credit Agreement.

"DIP Loans" has the meaning given to the term "Loans" in the DIP Credit Agreement.

"Disposition" means, with respect to any property, any sale, lease, sale and leaseback, assignment, conveyance, transfer or other disposition thereof, including any Casualty Event. The terms "Dispose" and "Disposed" shall have correlative meanings.

"Disqualified Stock" means, with respect to any Person, any Stock or Stock Equivalents of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is putable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable (other than solely for Stock or Stock Equivalents that is not Disqualified Stock), other than as a result of a change of control, asset sale or casualty event, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than as a result of a change of control, asset sale or casualty event to the extent the terms of such Stock or Stock Equivalents provide that such Stock or Stock Equivalents shall not be required to be repurchased or redeemed until the Maturity Date has occurred or such repurchase or redemption is otherwise subject to the payment in full of the Loans hereunder or is otherwise permitted by this Agreement (including as a result of a waiver hereunder)), in whole or in part, in each case before the date that is 91 days after the Maturity Date hereunder; *but if* such Stock or Stock Equivalents are issued to any plan for the benefit of employees of the Borrower or its Subsidiaries or by any such plan to such employees, such Stock or Stock Equivalents shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Borrower or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations; *provided*, *further*, that any Stock or Stock Equivalents held by any future, present or former employee, director, manager or consultant of the Borrower, any Subsidiary or any of its direct or indirect parent companies or any other entity in which the Borrower or a Restricted Subsidiary has an Investment and is designated in good faith as an "affiliate" by the Board of Directors of the Borrower, in each case pursuant to any equity holders' agreement, management equity plan or stock incentive plan or any other management or employee benefit plan or agreement shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Borrower or its Subsidiaries.

"Distributable Free Cash Flow" means, as of any date of determination, an amount equal to the difference of (a) the aggregate amount of Free Cash Flow that has been generated since the Effective Date *minus* (b) the aggregate amount of the Free Cash Flow Utilizations that have occurred since the Effective Date. For the avoidance of doubt, any amount deducted in calculating Distributable Free Cash Flow as of any date of determination shall be without duplication of amounts deducted in calculating Free Cash Flow for purposes of such calculation of Distributable Free Cash Flow.

"Dollar-Denominated Production Payments" means production payment obligations recorded as liabilities in accordance with GAAP, together with all undertakings and obligations in connection therewith.

"dollars" or "$" refers to lawful money of the United States of America.

"Domestic Subsidiary" means each Subsidiary that is organized under the laws of the United States or any state thereof, or the District of Columbia.

"Early Opt-in Election" means, if the then-current Benchmark is USD LIBOR, the occurrence of:

(1) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five (5) currently outstanding U.S. dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(2) the joint election by the Administrative Agent and the Borrower to trigger a fallback from LIBOR and the provision by the Administrative Agent of written notice of such election to the Lenders.

"EBITDAX" means, for any period, Consolidated Net Income for such period ***plus***, without duplication and to the extent reflected as a charge in the statement of such Consolidated Net Income for such period, the sum of (a) income tax expense, (b) interest expense, (c) depletion, depreciation and amortization expense, (d) any loss on Dispositions of assets or retirement of debt and other non-recurring cash losses, charges or expenses (including those resulting from restructurings, divestitures and severances) (*but* the amount of non-recurring cash losses, charges or expenses added back pursuant to this clause (d) for any period shall not exceed 5% of EBITDAX (before giving effect to this addition for non-recurring cash losses, charges or expenses) for such period), (e) any other non-cash charge, non-cash expenses or non-cash losses of any Group Member for such period (excluding any such charge, expense or loss incurred in the ordinary course of business that constitutes an accrual of or reserve for cash charges for any future period) including non-cash losses or charges resulting from the requirements of SFAS 133 or 143 (in each case used in this definition, as the same has been and may be amended, supplemented and replaced), *but* cash payments made during such period or in any future period in respect of such non-cash charges, expenses or losses (other than any such excluded charge, expense or loss as described above) shall be subtracted from Consolidated Net Income in calculating EBITDAX for the period in which such payments were made, (f) any fees, expenses and other transaction costs (whether or not such transactions were consummated) which are incurred through June 30, 2021 in connection with fresh start accounting, the Chapter 11 Cases, the Transactions, the Plan of Reorganization, the transactions contemplated thereby and any other reorganization items and restructuring costs, (g) any expense or loss in respect of a Qualifying VPP (other than any expense or loss in respect of the marketing of production related to any VPP Properties) and (h) exploration expenses, ***minus***, to the extent included in the statement of such Consolidated Net Income for such period, the sum of (i) interest income, (ii) any gains on Dispositions of assets or retirement of debt

and other non-recurring cash income or gains (including those resulting from restructurings, divestitures and severances) and (iii) any other non-cash income or gain (excluding any items that represent the reversal of any accrual of, or cash reserve for, anticipated cash charges in any prior period that are described in the parenthetical to clause (e) above), including any non-cash income or gains resulting from the requirements of SFAS 133 or 143, all as determined on a consolidated basis in accordance with GAAP and (iv) any income or gain in respect of a Qualifying VPP (other than any income or gain in respect of the marketing of production related to any VPP Properties).

For purposes of calculating EBITDAX for any Rolling Period (other than for purposes of calculating Free Cash Flow or Distributable Free Cash Flow), if any Group Member shall have (a) made any Investment in any Unrestricted Subsidiary, (b) made any acquisition or Disposition of assets other than from or to another Group Member, (c) consolidated or merged with or into any Person (other than another Group Member), (d) Disposed of the equity interests of a Group Member other than from or to another Group Member, or (e) made any acquisition of a Person that becomes a Group Member, then EBITDAX shall be calculated on a Pro Forma Basis; but the Borrower may elect not to calculate EBITDAX on a Pro Forma Basis with respect to any one or more Investments, acquisitions, Dispositions, consolidations and mergers during a Rolling Period if the same would not reasonably be expected to increase or decrease EBITDAX for such Rolling Period by more than 5%; provided that the calculations of such pro forma adjustments are acceptable to the Administrative Agent in its reasonable discretion.

For purposes of calculating EBITDAX for the fiscal quarter of the Borrower ending December 31, 2020, March 31, 2021, June 30, 2021 and September 30, 2021 (other than for purposes of calculating Free Cash Flow or Distributable Free Cash Flow), (a) EBITDAX for the Rolling Period ending December 31, 2020 and up to but not including March 31, 2021 shall be an amount equal to EBITDAX for the fiscal quarter ending on such date *multiplied by* 4, (b) EBITDAX for the Rolling Period ending March 31, 2021 and up to but not including June 30, 2021 shall be an amount equal to EBITDAX for the fiscal quarter ending on such date *multiplied by* 4, (c) EBITDAX for the Rolling Period ending June 30, 2021 and up to but not including September 30, 2021 shall be an amount equal to EBITDAX for the two fiscal quarter period ending on such date *multiplied by* 2 and, (d) EBITDAX for the Rolling Period ending September 30, 2021 and up to but not including December 31, 2021 shall be an amount equal to EBITDAX for the three fiscal quarter period ending on such date *multiplied by* 4/3. For the avoidance of doubt, each fiscal quarter thereafter, EBITDAX shall be equal to EBITDAX for any Rolling Period then ending.

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Effective Date" means the date on which the conditions specified in Section 6.01 are satisfied (or waived in accordance with Section 12.02).

"Electronic Signature" means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

"Engineering Reports" has the meaning assigned to such term in Section 2.07(c)(i).

"Enumerated Lien" means, at any time of determination, any Lien securing Other Secured Debt; but if at such time such Lien could otherwise be incurred under Section 9.03, such Lien shall not be deemed to be an Enumerated Lien at such time.

"Environmental Law" means any applicable Federal, state, or local statute, law (including common law), rule, regulation, ordinance, or code of any Governmental Authority now or hereafter in effect and in each case as amended, and any binding judicial or administrative interpretation thereof, including any binding judicial or administrative order, consent decree or judgment, relating to the protection of the environment, including ambient air, surface water, groundwater, land surface and subsurface strata and natural resources such as wetlands, or human health or workplace safety (to the extent relating to human exposure to Hazardous Materials), or the release or threatened release of Hazardous Materials.

"Environmental Permit" means any permit, registration, license, approval, consent, exemption, variance, or other authorization required under or issued pursuant to applicable Environmental Laws.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time. Section references to ERISA are to ERISA as in effect on the Effective Date and any subsequent provisions of ERISA amendatory thereof, supplemental thereto or substituted therefor.

"ERISA Affiliate" means each person (as defined in Section 3(9) of ERISA) that together with the Borrower would be deemed to be a "single employer" within the meaning of Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"ERISA Event" means (a) a Reportable Event with respect to a Plan; (b) the failure by the Borrower or any ERISA Affiliate to meet the minimum funding standard of Section 412 of the Code, other than a failure to which a waiver of such minimum funding standard applies; (c) the incurrence by the Borrower or any ERISA Affiliate of any liability pursuant to Section 4063 or 4064 of ERISA; (d) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan if there is potential liability therefor or notification that a Multiemployer Plan is in endangered or critical status or is insolvent (within the meaning of Title IV of ERISA); (e) the filing of a notice of intent to terminate a Plan in a distress termination under, or the treatment of a Plan amendment as a distress termination under, Section 4041(c) of ERISA; (f) receipt from

the Internal Revenue Service of notice of the failure of a Plan to qualify under Section 401(a) of the Code; (g) the engagement by the Borrower or any ERISA Affiliate in a transaction that could reasonably be expected to be subject to Section 4069 or Section 4212(c) of ERISA; (h) the imposition of a Lien upon the Borrower pursuant to Section 430(k) of the Code or Section 303(k) of ERISA; (i) the making of an amendment to a Plan that could reasonably be expected to result in the posting of bond or security under Section 436(f)(1) of the Code; or (j) the imposition or incurrence of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA upon the Borrower or any ERISA Affiliate.

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

"Event of Default" has the meaning assigned to such term in Section 10.01.

"Excepted Liens" means:

(a) Liens for taxes, assessments or governmental charges or claims not yet overdue for a period of more than 60 days or that are being contested in good faith by appropriate proceedings for which appropriate reserves have been established to the extent required by and in accordance with GAAP, or for property taxes on property that the Borrower or one of its Subsidiaries has determined to abandon if the sole recourse for such tax, assessment, charge or claim is to such property;

(b) Liens in respect of property or assets of the Borrower or any Restricted Subsidiary imposed by law, such as landlords', vendors', operators', suppliers', carriers', warehousemen's, repairmen's, construction contractors', workers', materialmen's and mechanics' Liens and other similar Liens arising in the ordinary course of business or incident to the exploration, development, operation or maintenance of Oil and Gas Properties, in each case so long as such Liens arise in the ordinary course of business and do not individually or in the aggregate have a Material Adverse Effect;

(c) Liens incurred, or pledges or deposits made (i) in connection with workers' compensation, unemployment insurance and other types of social security, old age pension, public liability obligations or similar legislation and deposits securing liabilities to insurance carriers under insurance or self-insurance arrangements in respect of such obligations, (ii) to secure liabilities for reimbursement or indemnification obligations (including obligations in respect of letters of credit or bank guarantees for the benefit of) to insurance carriers providing property, casualty or liability insurance to the Borrower or any Restricted Subsidiary, or (iii) to secure the performance of tenders, statutory and regulatory obligations, plugging and abandonment obligations, surety, stay, customs and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (including letters of credit issued in lieu of such bonds or to support the issuance thereof) incurred in the ordinary course of business or otherwise constituting Investments permitted hereunder;

(d) ground leases, subleases, licenses or sublicenses in respect of real property on which facilities owned or leased by the Borrower or any Restricted Subsidiary are located;

(e) easements, rights-of-way, licenses, restrictions (including zoning restrictions), title defects, exceptions, reservations, deficiencies or irregularities in title, encroachments, protrusions, servitudes, rights, eminent domain or condemnation rights, permits, conditions and covenants and other similar charges or encumbrances (including in any rights of way or other property of the Borrower or its Restricted Subsidiaries for the purpose of roads, pipelines, transmission lines, transportation lines, distribution lines for the removal of gas, oil or other minerals or timber, and other like purposes, or for joint or common use of real estate, rights of way, facilities and equipment) not interfering in any material respect with the business of the Borrower and its Restricted Subsidiaries, taken as a whole and, to the extent reasonably agreed by the Administrative Agent, any exception on the title reports issued to the Administrative Agent in connection with any Borrowing Base Property;

(f) any interest or title of a lessor, sublessor, licensor or sublicensor or secured by a lessor's, sublessor's, licensor's or sublicensor's interest under any lease, sublease, license or sublicense permitted by this Agreement;

(g) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(h) Liens on goods or inventory the purchase, shipment or storage price of which is financed by a documentary letter of credit or bankers' acceptance issued for the account of the Borrower or any Restricted Subsidiary, if such Lien secures only the obligations of the Borrower or such Restricted Subsidiary in respect of such letter of credit or bankers' acceptance to the extent permitted under Section 9.02;

(i) leases, licenses, subleases or sublicenses granted to others not interfering in any material respect with the business of the Borrower and its Restricted Subsidiaries, taken as a whole;

(j) Liens arising from precautionary UCC financing statement or similar filings made in respect of operating leases entered into by the Borrower or any Restricted Subsidiary;

(k) Liens created in the ordinary course of business in favor of banks and other financial institutions over credit balances of any bank accounts of the Borrower and the Restricted Subsidiaries held at such banks or financial institutions, as the case may be, to facilitate the operation of cash pooling and/or interest set-off arrangements in respect of such bank accounts in the ordinary course of business;

(l) Liens which arise in the ordinary course of business under operating agreements (including preferential purchase rights, consents to assignment and other restrains on alienation), joint operating agreements, joint venture agreements, oil and gas partnership agreements, oil and gas leases, farm-out agreements, farm-in agreements, division orders, contracts for the sale, transportation or exchange of oil and natural gas, unitization and pooling declarations and agreements, area of mutual interest agreements, overriding royalty and royalty agreements, reversionary interests, marketing agreements, processing agreements, net profits agreements, development agreements, gas balancing or deferred production agreements, injection, repressuring and recycling agreements, salt water or other disposal agreements, seismic or other

geophysical permits or agreements, and other agreements that are usual and customary in the Oil and Gas Business and are for claims which are not delinquent for more than sixty (60) days or that are being contested in good faith and by appropriate proceedings for which appropriate reserves have been established to the extent required by and in accordance with GAAP, if any such Lien referred to in this clause does not in the aggregate have a Material Adverse Effect;

(m) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of the Borrower and its Restricted Subsidiaries, taken as a whole;

(n) Liens arising under statutory provisions of applicable law with respect to production purchased from others; and

(o) Liens, titles and interests of licensors of software and other intangible property licensed by such licensors to the Borrower or any other Credit Party, restrictions and prohibitions on encumbrances and transferability with respect to such property and the Borrower's or such other Credit Party's interests therein imposed by such licenses, and Liens and encumbrances encumbering such licensors' titles and interests in such property and to which the Borrower's or such other Credit Party's license interests may be subject or subordinate, in each case, whether or not evidenced by UCC financing statement filings or other documents of record, provided that such Liens do not secure Indebtedness of the Borrower or any other Credit Party and do not encumber Property of the Borrower or any other Credit Party other than the Property that is the subject of such licenses.

The parties acknowledge and agree that no intention to subordinate the priority afforded any Lien granted in favor of the Collateral Agent, for the benefit of the Secured Parties under the Security Instruments is to be hereby implied or expressed by the permitted existence of such Excepted Liens.

"Excess Cash" means, at any time, the aggregate cash and Permitted Investments of the Borrower and its Restricted Subsidiaries (other than Excluded Cash) in excess of $75,000,000.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Excluded Account" means (a) any Deposit Account, Commodity Account or Securities Account identified in writing to the Administrative Agent on or before the Effective Date or within 15 Business Days of such Deposit Account, Commodity Account or Securities Account being opened, so long as the balance and the fair market value of the securities and commodities in such accounts, in the aggregate, do not exceed $10,000,000 at any time, (b) any Deposit Account that is a zero balance account or a deposit account for which the balance of such Deposit Account is transferred at the end of each date to a deposit account that is not an Excluded Account, (c) any other Deposit Accounts exclusively used for trust, payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of any employees of the Credit Parties, (d) fiduciary accounts, (e) trust and suspense accounts of the Borrower and any other Credit Party used for payments of royalty obligations, working interest and similar obligations, (f) amounts held in

escrow or in trust related to transactions not otherwise prohibited under this Agreement, (g) amounts held in escrow by a trustee under any indenture or other debt instrument pursuant to customary escrow arrangements pending the discharge, defeasance, redemption or repurchase of Indebtedness of the Borrower or any Restricted Subsidiary thereof, in each case solely to the extent the relevant discharge, defeasance, redemption or repurchase would be permitted under this Agreement, and (h) accounts constituting cash collateral accounts permitted under Section 9.03.

"Excluded Cash" means (a) any cash or Permitted Investments of the Borrower or any Restricted Subsidiary in an Excluded Account, (b) any cash or Permitted Investments constituting Cash Collateral held by the Collateral Agent pursuant to this Agreement or any other Loan Document, and (c) checks issued, wires initiated, or automated clearing house transfers initiated, in each case (i) solely to the extent issued or initiated to satisfy bona fide expenditures of the Borrower or any Restricted Subsidiary, and (ii) on account of transactions not prohibited under this Agreement and in the ordinary course of business.

"Excluded Property" means (a) all Excluded Stock; (b) any property to the extent the grant or maintenance of a Lien on such property (i) is prohibited by any Requirement of Law, (ii) could reasonably be expected to result in material and adverse tax consequences to the Borrower or any Restricted Subsidiary, (iii) requires a consent not obtained of any Governmental Authority pursuant to applicable law or (iv) is prohibited by, or requires any consent not obtained under, any Contractual Requirements, except to the extent that such Contractual Requirement (not entered into in contemplation of this Agreement) providing for such prohibition or requiring such consent is ineffective under applicable law (including pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the UCC); (c) motor vehicles and other assets subject to certificates of title; (d) Excluded Accounts; (e) all real property (owned or leased) not constituting Oil and Gas Properties; (f) any foreign assets or credit support with respect to such foreign assets; (g) any property or assets owned by a Foreign Subsidiary or an Unrestricted Subsidiary; (h) any intellectual property; (i) margin stock and, to the extent prohibited by the terms of any applicable organizational documents, joint venture agreement, shareholders' agreement or similar agreement, Stock or Stock Equivalents in any other Person other than Wholly-Owned Subsidiaries and (j) any property with respect to which, in the reasonable judgment of the Administrative Agent, the cost of obtaining a security interest in, or Lien on, such property in favor of the Secured Parties under the Security Instruments, or the perfection of such security interest or Lien, shall be excessive in view of the benefits to be obtained by the Secured Parties therefrom.

"Excluded Stock" means (a) any Stock or Stock Equivalents with respect to which, in the reasonable judgment of the Administrative Agent, the cost of pledging such Stock or Stock Equivalents in favor of the Secured Parties under the Security Instruments, or the perfection of such pledge, shall be excessive in view of the benefits to be obtained by the Secured Parties therefrom; (b) any Stock or Stock Equivalents that is voting Stock of a Foreign Corporate Subsidiary or FSHCO in excess of 65% of the outstanding Stock and Stock Equivalents of such class (such percentages to be adjusted upon any change of law as may be required to avoid adverse U.S. federal income tax consequences to the Borrower or any Subsidiary); (c) in the case of (i) any Stock or Stock Equivalents of any Subsidiary to the extent the pledge of such Stock or Stock Equivalents is prohibited by Contractual Requirements or (ii) any Stock or Stock Equivalents of any Subsidiary that is non-Wholly-Owned Subsidiaries at the time such Subsidiary becomes a Subsidiary, any Stock or Stock Equivalents of each such Subsidiary described in clause (i) or (ii)

to the extent (A) that a pledge thereof to secure the Obligations is prohibited by any applicable Contractual Requirement (not entered into in contemplation of this Agreement) (other than customary nonassignment provisions which are ineffective under the UCC or other applicable Requirements of Law), (B) any Contractual Requirement prohibits such a pledge without the consent of any other party; but this clause (B) shall not apply if (1) such other party is a Credit Party or a Wholly-Owned Subsidiary or (2) consent has been obtained to consummate such pledge (it being understood that the foregoing shall not be deemed to obligate the Borrower or any Subsidiary to obtain any such consent) and for so long as such Contractual Requirement or replacement or renewal thereof is in effect, or (C) a pledge thereof to secure the Obligations would give any other party (other than a Credit Party or a Wholly-Owned Subsidiary) to any Contractual Requirement governing such Stock or Stock Equivalents the right to terminate its obligations thereunder (other than customary non-assignment provisions that are ineffective under the Uniform Commercial Code or other applicable Requirement of Law); (d) the Stock or Stock Equivalents of any Unrestricted Subsidiary, (e) the Stock or Stock Equivalents of any Subsidiary of a Foreign Corporate Subsidiary or FSHCO, (f) any Stock or Stock Equivalents of any Subsidiary to the extent that the pledge of such Stock or Stock Equivalents would result in adverse tax consequences that are not de minimis to the Borrower or any Subsidiary as reasonably determined by the Borrower, and (g) any Stock or Stock Equivalents to the extent the pledge thereof would be prohibited by any Requirement of Law.

"Excluded Subsidiary" means (a) the entities listed on Schedule 1.02(a), (b) any Restricted Subsidiary that is not a Wholly-Owned Material Subsidiary, (c) any direct or indirect Subsidiary of the Borrower that is a Foreign Subsidiary or FSHCO (or any direct or indirect Subsidiary of a Foreign Subsidiary or a FSHCO), (d) any Unrestricted Subsidiary, (e) each Subsidiary that is prohibited by (i) any applicable contractual obligation existing on the Effective Date or the date such Person becomes a Subsidiary (other than customary non-assignment provisions that are ineffective under the UCC or other applicable law or any term, covenant, condition or provision that could be waived by the Borrower or its Affiliates and only to the extent such contractual obligation was not entered into in contemplation of such Subsidiary becoming a Subsidiary or a Restricted Subsidiary), or (ii) such Subsidiary's organizational documents or any applicable law, rule or regulation, in each case, from guaranteeing or granting Liens to secure the Obligations at the time such Subsidiary becomes a Restricted Subsidiary (and for so long as such restriction or any replacement or renewal thereof is in effect) or such guarantee or grant of Liens to secure the Obligations at the time such Subsidiary becomes a Restricted Subsidiary would require a consent, approval, license or authorization of a Governmental Authority (unless such consent, approval, license or authorization has been received and only for so long as such restriction is outstanding), (f) solely in the case of any CFTC Hedging Obligation, any Subsidiary that is not an "eligible contract participant" (as defined in the Commodity Exchange Act) and (g) any other Subsidiary with respect to which, (i) in the reasonable judgment of the Administrative Agent, the cost or other consequences of providing a guarantee of the Obligations shall be excessive in view of the benefits to be obtained by the Lenders therefrom or (ii) providing such a guarantee could reasonably be expected to result in material and adverse tax consequences as reasonably determined by the Borrower in good faith.

"Excluded Swap Obligation" means, with respect to the Borrower and the Guarantors individually determined, any CFTC Hedging Obligation if, and solely to the extent that, all or a portion of the guarantee of the Borrower or

such Guarantor of, or the grant by the Borrower or such Guarantor of a security interest to secure, such CFTC Hedging Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act by virtue of the Borrower's or such Guarantor's failure for any reason to constitute an "eligible contract participant" (as defined in the Commodity Exchange Act) with respect to such CFTC Hedging Obligation at any time such guarantee or grant of a security interest becomes effective with respect to such CFTC Hedging Obligation. If a CFTC Hedging Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such CFTC Hedging Obligation that is attributable to swaps for which such guarantee or security interest is or becomes illegal.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient:

(a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof), or (ii) that are Other Connection Taxes,

(b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment to such Lender that was requested by the Borrower under Section 5.05), or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 5.03, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office,

(c) Taxes attributable to such Recipient's failure or inability to comply with Section 5.03(g) or Section 5.03(i), and

(d) any withholding Taxes imposed under FATCA.

"Existing Letters of Credit" means each letter of credit set forth on Schedule 1.02(b) that was issued under the DIP Credit Agreement prior to the Effective Date by a Person that shall be an Issuing Bank with respect to such letter of credit. On the Effective Date, each Existing Letter of Credit shall be deemed issued and outstanding as a Letter of Credit under this Agreement.

"Existing Secured Swap Agreements" means the Swap Agreements described on Schedule 1.02(c), which shall be secured with the Obligations pursuant to this Agreement and the other Loan Documents.

"Existing Treasury Management Agreements" means Treasury Management Agreements between the Borrower or any other Credit Party, on the one hand, and any Lender or an Affiliate of a Lender, on the other hand, existing on the date hereof, which shall be secured with the Obligations pursuant to this Agreement and the other Loan Documents.

"Extended Hedge Deadline" has the meaning assigned to such term in Section 8.19.

"Facility Amount" means $2,500,000,000.00.

"Fair Market Value" means, with respect to any asset or group of assets on any date of determination, the value of the consideration obtainable in a Disposition of such asset at such date of determination assuming a Disposition by a willing seller to a willing purchaser dealing at arm's length and arranged in an orderly manner over a reasonable period of time having regard to the nature and characteristics of such asset, as reasonably determined by the Borrower.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version to the extent substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code, any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

"FCPA" means the Foreign Corrupt Practices Act of 1977, as amended.

"Federal Funds Effective Rate" means, for any day, the weighted average of the per annum rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published on the next succeeding Business Day by the Federal Reserve Bank of New York or, if such rate is not so published for any date that is a Business Day, the Federal Funds Effective Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal Funds brokers of recognized standing selected by it.

"Federal Reserve Bank of New York's Website" means the website of the Federal Reserve Bank of New York at http://www.newyorkfed.org, or any successor source.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Fee Letters" means, collectively, (a) the Fee Letter, dated as of June 28, 2020, among the Borrower and MUFG Union Bank, N.A., (b) the Lead Arranger Fee Letter, dated as of June 28, 2020, among the Borrower and MUFG Union Bank, N.A. and (c) any other fee letters entered into between Administrative Agent (or its Affiliates) and the Borrower.

"Financial Officer" means, for any Person, the chief financial officer, principal accounting officer, treasurer, or controller of such Person or any other natural person principally responsible for the financial matters of such Person. Unless otherwise specified, all references herein to a Financial Officer mean a Financial Officer of the Borrower.

"Financial Performance Covenants" means the financial covenants set forth in Section 9.01(a), Section 9.01(b), Section 9.01(c) (but only to the extent Other Secured Debt is outstanding at such time or will be outstanding upon giving pro forma effect to the transactions for which pro forma compliance is required to be measured) and Section 9.01(d).

"FLLO Term Loan" means any borrowed money Indebtedness incurred on the Effective Date that is secured by Liens on the Collateral the priority of which are equal and ratable with the Liens securing the Obligations and subject to an Acceptable Collateral Trust Agreement providing for payment priority of the Obligations ahead of such Indebtedness.

"Flood Insurance Regulations" means (a) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (b) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (c) the National Flood Insurance Reform Act of 1994 (amending 42 USC § 4001, et seq.), as the same may be amended or recodified from time to time, (d) the Flood Insurance Reform Act of 2004 and (e) the Biggert-Waters Flood Insurance Reform Act of 2012, in each case as now or hereafter in effect or any successor statute thereto and including any regulations promulgated thereunder.

"Floor" means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to LIBOR.

"Forecasted Production" means, for any month of determination, the projected production for such month in respect of (i) crude oil and (ii) natural gas and natural gas liquids (for purposes of this clause (ii) only, taken together), in each case as set forth in the Forecasted Production Report most recently delivered pursuant to Section 8.12(e).

"Forecasted Production Report" means a report certified by a Responsible Officer of the Borrower and in form and substance reasonably satisfactory to the Administrative Agent, setting forth, on a monthly basis for the twenty-four (24) month period beginning on the date of delivery of such Forecasted Production Report, the reasonably anticipated projected production for each such month from the Borrower's and its Restricted Subsidiaries' Oil and Gas Properties in respect of (i) crude oil and (ii) natural gas and natural gas liquids (for purposes of this clause (ii) only, taken together), in each case as determined by the Borrower based on the Borrower's internal engineering reports and as otherwise reasonably satisfactory to the Administrative Agent.

"Forecasted Production Swap Agreements" shall have the meaning provided in Section 9.18.

"Foreign Corporate Subsidiary" means any direct or indirect Foreign Subsidiary that is treated as a corporation for U.S. federal income tax purposes.

"Foreign Subsidiary" means any Subsidiary that is organized under the laws of a jurisdiction other than the United States of America or any state thereof or the District of Columbia.

"Free Cash Flow" means the amount, whether positive or negative, equal to (a) an amount equal to the sum of (i) EBITDAX of the Borrower and the other Credit Parties for the period beginning on the Effective Date and ending on the last day of the most recently ended fiscal period for which financial statements have been delivered pursuant to Section 8.01(a) or (b), as applicable (the "Specified Period") and (ii) the aggregate net cash proceeds received by the Borrower from the issuance of its Stock not constituting Disqualified Stock *minus*, without duplication, (b) the sum, in each case without duplication, of the following amounts of the Borrower and the other Credit Parties paid during such Specified Period: (i) voluntary and scheduled cash prepayments

and repayments of Indebtedness (other than the Tranche A Loans) which cannot be reborrowed pursuant to the terms of such Indebtedness (other than to the extent funded or financed with net cash proceeds from Indebtedness permitted hereunder), (ii) capital expenditures paid in cash, (iii) changes in cash working capital, (iv) consolidated interest expenses determined in accordance with GAAP and paid in cash, (v) income taxes paid in cash, (vi) exploration and development expenses or costs paid in cash, (vii)(A) Investments made in cash (other than to any Credit Party) (other than those made in reliance on Section 9.06(b) or Section 9.06(r)) and (B) Restricted Payments made in cash (other than to any Credit Party) (other than those made in reliance on Section 9.04(f) or Section 9.04(g)) and (viii) to the extent not included in the foregoing and added back in the calculation of EBITDAX, any other cash charge (other than those described in clause (f) of the definition of "EBITDAX") that reduces the earnings of the Borrower and the other Credit Parties, *plus* (c) the sum, in each case without duplication, of any non-cash amounts that were deducted from or otherwise served to decrease EBITDAX for such Specified Period, *minus* (d) the sum, in each case without duplication, of any non-cash amounts that were added to or otherwise served to increase EBITDAX for such Specified Period, *plus* (e) any net cash proceeds received from Dispositions not required to be applied to repay Indebtedness (including the Loans pursuant to Section 3.04(c)(iii)).

"Free Cash Flow Utilizations" means, for any period, the aggregate amount of each of the following transactions during such period: (a) Restricted Payments made pursuant to Section 9.04(f) or Section 9.04(g), (b) Redemptions of Permitted Additional Debt or Other Secured Debt made pursuant to Section 9.05(a)(iii) and (c) Investments made pursuant to Section 9.06(r).

"FSHCO" means any direct or indirect Subsidiary, substantially all of the assets of which consist of equity interests and/or equity interests and indebtedness (and/or cash and cash equivalents and other assets being held on a temporary basis incidental to the holding of such equity interests and/or indebtedness) in one or more direct or indirect Foreign Corporate Subsidiaries and/or one or more other FSHCOs.

"GAAP" means generally accepted accounting principles in the United States of America as in effect from time to time, subject to the terms and conditions set forth in Section 1.05.

"Global Intercompany Note" means that certain Global Intercompany Note, dated as of the date hereof, entered into by and between the issuers and holders party thereto from time to time.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Group Members" means, collectively, the Borrower and each of its Restricted Subsidiaries.

"Guarantee Obligations" means, as to any Person, any obligation of such Person guaranteeing or intended to guarantee any Indebtedness of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including any obligation of such Person,

whether or not contingent, (a) to purchase any such Indebtedness or any property constituting direct or indirect security therefor, (b) to advance or supply funds (i) for the purchase or payment of any such Indebtedness, or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such Indebtedness of the ability of the primary obligor to make payment of such Indebtedness, or (d) otherwise to assure or hold harmless the owner of such Indebtedness against loss in respect thereof; but the term "Guarantee Obligations" shall not include endorsements of instruments for deposit or collection in the ordinary course of business or customary and reasonable indemnity obligations in effect on the Effective Date or entered into in connection with any acquisition or Disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee Obligation shall be deemed to be an amount equal to the stated or determinable amount of the Indebtedness in respect of which such Guarantee Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

"Guarantors" means the Borrower (on the terms set forth in the Guaranty and Collateral Agreement) and each Restricted Subsidiary that guarantees the Obligations pursuant to Section 8.14.

"Guaranty and Collateral Agreement" means the Guaranty and Collateral Agreement, dated as of the Effective Date, among the Collateral Agent, the Borrower and the Guarantors, in form and substance reasonably satisfactory to the Collateral Agent pursuant to which (a) the Guarantors guaranty, on a joint and several basis, payment of the Obligations, and (b) the Borrower and the Guarantors grant security interests on the Borrower's and the Guarantors' personal property constituting "Collateral" as defined therein in favor of the Collateral Agent for the benefit of the Secured Parties to secure the Obligations, as the same may be amended, modified, supplemented or restated from time to time.

"Hazardous Material" means any substance regulated or as to which liability might arise under any applicable Environmental Law due to its hazardous or toxic characteristics including: any chemical, compound, material, product, byproduct, substance or waste defined as or included in the definition or meaning of "hazardous substance," "hazardous material," "hazardous waste," "solid waste," "toxic waste," "extremely hazardous substance," "toxic substance," "contaminant," "pollutant," or words of similar meaning or import found in any applicable Environmental Law; Hydrocarbons, petroleum products, petroleum substances, natural gas, oil, oil and gas waste, crude oil, and any components, fractions, or derivatives thereof; and radioactive materials, explosives, asbestos or asbestos containing materials, polychlorinated biphenyls, radon, infectious or medical wastes.

"Hedge Availability Shortfall Event" has the meaning assigned to such term in Section 8.19.

"Highest Lawful Rate" means, with respect to each Lender, the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the Loans or on other Obligations under laws applicable to such Lender

which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws allow as of the date hereof.

"Historical Financial Statements" means (a) the audited consolidated financial statements of the Borrower for the fiscal year ended December 31, 2019, (b) the unaudited consolidated financial statements of the Borrower for the fiscal quarters thereafter ending March 31, 2020, June 30, 2020 and September 30, 2020 and each other fiscal quarter thereafter ending at least 60 days prior to the Effective Date, and (c) a pro forma unaudited consolidated balance sheet of the Borrower as of the Effective Date (based on the unaudited consolidated balance sheet of the Borrower as of the most recently ended calendar month ended at least 30 calendar days before the Effective Date) based on good faith estimates and assumptions believed by the Borrower to be reasonable at the time made, after giving effect to the making of the initial extensions of credit under this Agreement, as applicable, on the Effective Date and other Indebtedness permitted under this Agreement.

"Hydrocarbon Interests" means all rights, titles, interests and estates now or hereafter acquired in and to oil and gas leases, oil, gas and mineral leases, or other liquid or gaseous hydrocarbon leases, mineral fee interests, overriding royalty and royalty interests, net profit interests and production payment interests, including any reserved or residual interests of whatever nature.

"Hydrocarbons" means oil, gas, casinghead gas, drip gasoline, natural gasoline, condensate, distillate, liquid hydrocarbons, gaseous hydrocarbons and all products refined or separated therefrom.

"IBA" has the meaning assigned to such term in Section 1.06.

"Impacted Interest Period" has the meaning assigned to such term in the definition of "LIBOR."

"Indebtedness" of any Person means, without duplication:

(a) all indebtedness of such Person for borrowed money,

(b) all obligations of such Person for the deferred purchase price of property or services (other than current trade payables incurred in the ordinary course of such Person's business and other obligations to the extent such obligations may be satisfied at such Person's sole discretion by the issuance of Stock of such Person),

(c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments,

(d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property),

(e) all indebtedness attributable to Capital Leases of such Person,

(f) all obligations of such Person, contingent or otherwise, as an account party or applicant under or in respect of banker's acceptances, letters of credit, or similar arrangements,

(g) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (f) above,

(h) all obligations of the kind referred to in clauses (a) through (f) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on property owned by such Person (including accounts and contract rights, but excluding any Stock in joint ventures or Unrestricted Subsidiaries to the extent the Liens on such Stock secures Indebtedness of such joint venture or such Unrestricted Subsidiary that is nonrecourse to any Credit Party), whether or not such Person has assumed or become liable for the payment of such obligation, but the amount of Indebtedness for purposes of this clause (h) shall be an amount equal to the lesser of the unpaid amount of such Indebtedness and the Fair Market Value of the property subject to such Lien,

(i) liabilities with respect to payments received in consideration of oil, gas, or other minerals yet to be acquired or produced at the time of payment other than in respect of a Qualifying VPP (including obligations under "take-or-pay" contracts to deliver gas in return for payments already received and the undischarged balance of any production payment (other than a Qualifying VPP) created by such Person or for the creation of which such Person directly or indirectly received payment), and

(j) for the purposes of Section 9.02, Section 9.03, Section 10.01(f) and Section 10.01(g) only, all net obligations of such Person in respect of Swap Agreements (and any reference to the "principal amount" of obligations, or Indebtedness, in respect of any Swap Agreement shall be the Swap Termination Value at the relevant time of determination).

The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor. Notwithstanding the foregoing, (i) any Indebtedness that has been defeased in accordance with GAAP or defeased pursuant to the deposit of cash or cash equivalents (in an amount sufficient to satisfy all such obligations relating to such Indebtedness at maturity or redemption, as applicable, and all payments of interest and premium, if any) in a trust or account created or pledged for the sole benefit of the holders of such Indebtedness, and subject to no other Liens, and the other applicable terms of the instrument governing such Indebtedness, shall not constitute or be deemed Indebtedness, if such defeasance has been made in a manner not prohibited by this Agreement, (ii) Indebtedness shall not include endorsements of checks, bills of exchange and other instruments for deposit or collection in the ordinary course of business, (iii) for purposes of Sections 9.01 and 9.02, a Qualifying VPP shall not be treated as Indebtedness and (iv) Indebtedness shall not include obligations or liabilities arising in accordance with GAAP under arrangements or transactions in respect of the Borrower's and its Restricted Subsidiaries' headquarters and field offices (other than any financing transaction for borrowed money).

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower or any Guarantor under any Loan Document and, (b) to the extent not otherwise described in (a), Other Taxes, in each case, excluding any interest, penalties or expenses caused by the Administrative Agent's or Lender's gross negligence or willful misconduct (as determined in a final and non-appealable judgment by a court or competent jurisdiction).

"Indemnitee" has the meaning assigned to such term in Section 12.03(b).

"Ineligible Person" means, on any date, (a) a natural person (or a company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person), (b) a Defaulting Lender or any parent entity thereof, (c) the Borrower or any Subsidiary or Affiliate of the Borrower or (d) any competitor of the Borrower which has been designated by the Borrower as an "Ineligible Person" by notice to the Administrative Agent and the Lenders (including by posting such notice electronically) not less than two Business Days before such date; but "Ineligible Person" shall exclude any Person that the Borrower has designated as no longer being an "Ineligible Person" by notice delivered to the Administrative Agent from time to time.

"Information" has the meaning assigned to such term in Section 12.11.

"Initial Swap Schedule" means a report, in form and substance reasonably satisfactory to the Administrative Agent, setting forth, as of a date on or about the date of delivery of the Initial Reserve Report, the terms, and Swap PV of all Swap Agreements of the Credit Parties with an Approved Counterparty on such date.

"Initial Redetermination Date" means October 1, 2021.

"Initial Reserve Report" means an internally prepared report with respect to the Oil and Gas Properties of the Credit Parties to which Proved Reserves are attributed (other than VPP Properties or Oil and Gas Properties that are uneconomic based upon the pricing assumptions consistent with the most recent Bank Price Deck provided by the Administrative Agent to the Borrower) prepared by, or under the supervision of, the chief engineer of the Borrower with an "as of" date of January 1, 2021, prepared by an Approved Petroleum Engineer as to at least 80% by volume of the Oil and Gas Properties covered thereby, with the balance prepared by or under the supervision of the Borrower's chief engineer.

"Interest Election Request" means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.04.

"Interest Payment Date" means with respect to (a) any ABR Loan, the last day of each March, June, September and December and the Tranche A Termination Date or the Tranche B Maturity Date, as applicable, and (b) with respect to any LIBOR Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Borrowing of LIBOR Loans with an Interest Period of more than three (3) months' duration, each day prior to the last day of such Interest Period that occurs at intervals of three (3) months' duration after the first day of such Interest Period.

"Interest Period" means with respect to any Borrowing of LIBOR Loans, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months (or, with the consent of each Lender, twelve months or any other period requested by the Borrower) thereafter, as the Borrower may elect; *provided*, that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) any Interest Period pertaining to a Borrowing of LIBOR Loans that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period, (c) no Interest Period may have a term which would extend beyond the Maturity Date, and (d) the Borrower may elect Interest Periods commencing on the date of such Borrowing and ending between one week and one month thereafter if an Interpolated Rate may be determined with respect to such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"Interim Redetermination" has the meaning assigned to such term in Section 2.07(b).

"Interpolated Rate" means, at any time, for any Interest Period, the rate *per annum* (rounded to the same number of decimal places as the LIBOR Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBOR Screen Rate (for the longest period for which the LIBOR Screen Rate is) that is shorter than the Impacted Interest Period; and (b) the LIBOR Screen Rate for the shortest period (for which that LIBOR Screen Rate is available) that exceeds the Impacted Interest Period, in each case, at such time, *provided*, that, if any Interpolated Rate shall be less than 1.00%, such rate shall be deemed to be 1.00% for the purposes of this Agreement.

"Investment" means, for any Person:

(a) the acquisition (whether for cash, property, services or securities or otherwise) of Stock, Stock Equivalents, bonds, notes, debentures, partnership or other ownership interests or other securities of any other Person (including any "short sale" or any sale of any securities at a time when such securities are not owned by the Person entering into such sale),

(b) the making of any deposit with, or advance, loan or other extension of credit to, assumption of Indebtedness of, or capital contribution to, or purchase or other acquisition of an equity participation in, any other Person (including the purchase of property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such property to such Person) (including any partnership or joint venture),

(c) the entering into of any guarantee of, or other contingent obligation with respect to, Indebtedness or

(d) the purchase or other acquisition (in one transaction or a series of transactions) of (i) all or substantially all of the property and assets or business of another Person, or (ii) assets constituting a business unit, line of business or division of such Person; but in the event that any Investment is made by the Borrower or any Restricted Subsidiary in any Person through substantially concurrent interim transfers of any amount through one or more other Restricted Subsidiaries, then such other substantially concurrent interim transfers shall be disregarded for purposes of Section 9.06.

"ISDA Definitions" means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

"Issuing Bank" means (a) MUFG Union Bank, N.A., Bank of America, N.A., Bank of Montreal, Wells Fargo Bank, N.A., Citibank, N.A. JPMorgan Chase Bank, N.A. and Royal Bank of Canada, (b) any issuer of an Existing Letter of Credit, and (c) each Lender that is reasonably acceptable to the Administrative Agent and the Borrower and that agrees to act as an issuer of Letters of Credit hereunder, in each case, in its capacity as the issuer of Letters of Credit hereunder, and its successors in such capacity as provided in Section 2.08(i). Any Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank, in which case the term "Issuing Bank" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate. In the event there is more than one Issuing Bank hereunder at any time, references herein and in the other Loan Documents to the "Issuing Bank" shall be deemed to refer to the Issuing Bank in respect of the applicable Letter of Credit, or to all Issuing Banks, as the context requires.

"LC Commitment" means, at any time, $200,000,000, as the same may be modified from time to time in accordance with the terms of this Agreement.

"LC Disbursement" means a payment made by any Issuing Bank pursuant to a Letter of Credit.

"LC Exposure" means, at any time, the sum of the aggregate Undrawn Amount of all outstanding Letters of Credit at such time *plus* the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Tranche A Lender at any time shall be its Applicable Percentage of the total LC Exposure of all Tranche A Lenders at such time.

"LC Issuance Limit" means, with respect to each Issuing Bank, the amount set forth on Schedule 1.02(d) opposite such Issuing Bank's name.

"Lender Parent" means, with respect to any Lender, any Person as to which such Lender is, directly or indirectly, a subsidiary.

"Lender Treasury Management Agreement" means a Treasury Management Agreement between the Borrower or any other Credit Party, on the one hand, and any counterparty that is a Treasury Management Lender, on the other hand.

"Lenders" means the Persons listed on Annex I, any Person that shall have become a party hereto pursuant to an Assignment and Assumption, and any Person that shall have become a party hereto as an Additional Lender pursuant to Section 2.06(c), other than, in each case, any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

"Letter of Credit" means (a) any standby letter of credit issued pursuant to this Agreement and (b) each Existing Letter of Credit.

"Letter of Credit Agreements" means all letter of credit applications and other agreements (including any amendments, modifications or supplements thereto) submitted by the Borrower, or entered into by the Borrower, with an Issuing Bank relating to a Letter of Credit as the Issuing Bank may specify to the Borrower for use in connection with such Letter of Credit.

"LIBOR" means, for any Interest Period for each LIBOR Loan, the London interbank offered rate as administered by the ICE Benchmark Administration (or any other Person that takes over the administration of such rate for Dollars) for a period equal in length to such Interest Period as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion; in each case the "LIBOR Screen Rate") at approximately 11:00 a.m. (London time) two (2) Business Days before the first day of such Interest Period; *provided* that if the LIBOR Screen Rate shall be less than 1.00%, such rate shall be deemed to be 1.00% with respect to any Loans; *provided further* that if the LIBOR Screen Rate shall not be available at such time for such Interest Period (an "Impacted Interest Period") then LIBOR shall be the Interpolated Rate.

"LIBOR Loan" means any Loan bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

"LIBOR Screen Rate" shall have the meaning provided in the definition of "LIBOR."

"Lien" means any interest in Property securing an obligation owed to, or a claim by, a Person other than the owner of the Property, whether such interest is based on the common law, statute or contract, and whether such obligation or claim is fixed or contingent, and including the lien or security interest arising from a mortgage, pledge, security agreement, or a financing lease, consignment or bailment for security purposes, but in no event shall an operating lease be deemed to be a Lien.

"Liquidate" means, with respect to any Swap Agreement, the sale, assignment, novation, unwind, cancellation or early termination of all or any part of such Swap Agreement; *provided* that for purposes of this definition, a Swap Agreement shall not be deemed to have been Liquidated if, (a) such Swap Agreement is novated to an Approved Counterparty, with the Borrower or another Credit Party being the "remaining party" for purposes of such novation, or (b) upon its sale, assignment, novation, unwind or early termination, it is replaced, in a substantially contemporaneous transaction, with one or more Swap Agreements with prices, tenors and volumes not less favorable to the Credit Parties than those of such replaced Swap Agreements and without

cash payments to the Borrower or any other Credit Party in connection therewith. The terms "Liquidated" and "Liquidation" have correlative meanings thereto.

"Loan Documents" means this Agreement, the Notes, the Fee Letters, the Letter of Credit Agreements and the Security Instruments.

"Loan Limit" means the least of (a) the Facility Amount, (b) the then-effective Total Tranche A Commitment, and (c) the Available Borrowing Base at such time.

"Loan Limit Utilization Percentage" means, as of any day, the fraction (expressed as a percentage), (a) the numerator of which is the aggregate Revolving Credit Exposures on such day, and (b) the denominator of which is the Loan Limit in effect on such day.

"Loans" means the loans made by the Lenders to the Borrower pursuant to this Agreement.

"Majority Lenders" means, (a) at any time there are Tranche A Commitments, Non-Defaulting Lenders having or holding more than fifty percent (50%) of the sum of (i) the Total Tranche A Commitments of all Non-Defaulting Lenders plus (ii) the aggregate amount of outstanding Tranche B Loans, (b) at any time while any Tranche A Loan or LC Exposure is outstanding but there are no Tranche A Commitments, Non-Defaulting Lenders holding more than fifty percent (50%) of the sum of the outstanding aggregate principal amount of the Tranche A Loans and the Tranche B Loans and participation interests in Letters of Credit of all Non-Defaulting Lenders (in each case without regard to any sale by a Non-Defaulting Lender of a participation in any Loan under Section 12.04(c)) and (c) at any time while no Tranche A Loans, LC Exposure or Tranche A Commitments are outstanding, Non-Defaulting Lenders having or holding more than fifty percent (50%) of the total Tranche B Loans of all Non-Defaulting Lenders.

"Material Adverse Effect" means (a) after giving effect to the filing of the Chapter 11 Cases, the entry of the Confirmation Order and the confirmation and consummation of the Plan of Reorganization and (b) excluding any matters publicly disclosed prior to the filing of the Chapter 11 Cases, any matters disclosed in any first day pleadings or declarations in connection with the Chapter 11 Cases and the events and conditions related and/or leading up to the Chapter 11 Cases and the effects thereof, any circumstance or condition (each, an "Event"), that, individually or together with all other Events, would have a material adverse effect on the (i) business, operations, Property or condition (financial or otherwise) of the Credit Parties taken as a whole, (ii) ability of the Credit Parties, taken as a whole, to perform their payment obligations under the Loan Documents, or (iii) rights and remedies of the Administrative Agent, the Collateral Agent, the Issuing Bank or any Lender under the Loan Documents.

"Material Indebtedness" means any Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Swap Agreements, of any one or more of the Borrower and the other Group Members in an aggregate outstanding principal amount in excess of the greater of $75,000,000 and 2.0% of Adjusted Consolidated Net Tangible Assets for the most recently ended Rolling Period for which financial statements are available. For purposes of determining Material Indebtedness, the "principal amount" of the obligations of the Borrower or any Restricted Subsidiary in respect of any Swap Agreement at any time shall be the Swap Termination Value of such Swap Agreement (giving effect to any netting agreements) that the

Borrower or such Restricted Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

"Material Subsidiary" means, at any date of determination, each Restricted Subsidiary (a) that owns any Borrowing Base Properties, (b) incurs or guarantees any Material Indebtedness, or (c) whose assets or revenues, when taken together with its Subsidiaries, as of the last day of the most recent fiscal quarter for which financial statements are required to have been delivered pursuant to Section 8.01(a) or Section 8.01(b), were equal to or greater than 2.5% of the consolidated assets or the consolidated revenues of the Borrower and the other Group Members as of such date, as the case may be, determined in accordance with GAAP; *provided* that, if as of the last day of the most recent fiscal quarter for which financial statements are required to have been delivered pursuant to Section 8.01(a) or Section 8.01(b), the aggregate assets or revenues attributable to all Restricted Subsidiaries that are not Material Subsidiaries exceed 5.0% of the consolidated assets or the consolidated revenues of the Borrower and the other Group Members as of such date, as the case may be, then the Borrower shall designate in the compliance certificate required to be delivered pursuant to Section 8.01(c) for such fiscal quarter or fiscal year, as applicable, one or more Restricted Subsidiaries that are not Material Subsidiaries as Material Subsidiaries as may be necessary to eliminate such excess, and upon the delivery of such compliance certificate to the Administrative Agent, such designated Restricted Subsidiaries shall for all purposes of this Agreement constitute Material Subsidiaries.

"Maturity Date" means the later of the Tranche A Termination Date and the Tranche B Maturity Date.

"Minimum Collateral Coverage Percentage" means 90%.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto that is a nationally recognized rating agency.

"Mortgage" means a mortgage or a deed of trust, deed to secure debt, trust deed, assignment of as-extracted collateral, fixture filing or other security document entered into by the owner of a Mortgaged Property and the Collateral Agent for the benefit of the Secured Parties in respect of that Mortgaged Property, in such form as agreed between the Borrower and the Collateral Agent.

"Mortgaged Property" means, at any time, any real or immovable Property owned by the Borrower or any other Credit Party which is subject to the Liens existing at such time under the terms of the Security Instruments but, notwithstanding any provision in any Mortgage to the contrary, in no event shall any Building (as defined in the applicable Flood Insurance Regulations) or Manufactured (Mobile) Home (as defined in the applicable Flood Insurance Regulations) located on the Mortgaged Properties (as defined in the applicable Mortgage) within an area having special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968 be included in the definition of "Mortgaged Property" or "Mortgaged Properties" and no such Building or Manufactured (Mobile) Home shall be encumbered by any Mortgage.

"Multiemployer Plan" means any employee pension plan as defined in Section 3(2) of ERISA covered by Title IV of ERISA that is a multiemployer plan as defined in section 4001 (a)(3) of ERISA, to which (a) the Borrower or a Subsidiary makes, or is obligated to make, contributions

or during the preceding five plan years has made, or been obligated to make, contributions, or (b) any of Borrower or a Subsidiary has or would reasonably expect to have any liability, including on account of an ERISA Affiliate.

"New Borrowing Base Notice" has the meaning assigned to such term in Section 2.07(d).

"Non-Defaulting Lender" means, at any time, each Lender that is not a Defaulting Lender at such time.

"Non-U.S. Lender" means any Lender that is not a U.S. Person.

"Notes" means the promissory notes of the Borrower described in Section 2.02(d) and being substantially in the form of Exhibit A or such other form reasonably approved by the Administrative Agent and Borrower, together with all amendments, modifications, replacements, extensions and rearrangements thereof.

"NYFRB" means the Federal Reserve Bank of New York.

"NYFRB Rate" means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day, and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); *provided* that if none of such rates are published for any day that is a Business Day, the term "NYFRB Rate" means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; *provided*, *further*, that if any of the aforesaid rates as so determined be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Obligations" means any and all amounts owing or to be owing (including all interest on any of the Loans, any interest accruing at any post-default rate and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower or any Guarantor (or which could accrue but for the operation of applicable bankruptcy or insolvency laws), whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) by the Borrower or any Guarantor (whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising): (a) to the Administrative Agent; the Collateral Agent; the Issuing Banks or any Lender under any Loan Document; (b) to any Secured Swap Party under any Secured Swap Agreement or (c) to any Treasury Management Lender under any Lender Treasury Management Agreement, including in each case all renewals, extensions and/or rearrangements of any of the above; *provided* that solely with respect to any Guarantor that is not an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder, Excluded Swap Obligations of such Guarantor shall in any event be excluded from "Obligations" owing by such Guarantor.

"OFAC" means the U.S. Department of the Treasury's Office of Foreign Assets Control.

"Oil and Gas Business" means the business of acquiring, exploring, drilling, exploiting, developing, producing, operating, treating, storing, gathering, processing, and selling oil and gas

and the products thereof, together with activities (including physical and financial hedging and swapping and marketing activities) that are ancillary thereto.

"Oil and Gas Properties" means (a) Hydrocarbon Interests; (b) the Properties now or hereafter pooled or unitized with Hydrocarbon Interests; (c) all presently existing or future unitization agreements, communitization agreements, pooling agreements and declarations of pooled units and the units created thereby (including without limitation all units created under orders, regulations and rules of any Governmental Authority) which may affect all or any portion of the Hydrocarbon Interests; (d) all operating agreements, production sales or other contracts, farmout agreements, farm-in agreements, area of mutual interest agreements, equipment leases and other agreements which relate to any Hydrocarbon Interests or any interests therein or to the production, sale, purchase, exchange, processing, handling, storage, transporting or marketing of any Hydrocarbons from or attributable to such Hydrocarbon Interests; (e) all Hydrocarbons; (f) all tenements, hereditaments, appurtenances and Properties in any manner appertaining, belonging, affixed or incidental to any Hydrocarbon Interests, including all compressor sites, settling ponds and equipment or pipe yards; and (g) all Properties, rights, titles, interests and estates described or referred to above whether now owned or hereinafter acquired, including any and all Property, real or personal, immoveable or moveable, situated upon, used, held for use or useful in connection with the operating, working or development of any Hydrocarbon Interests or Property (excluding drilling rigs, automotive equipment, rental equipment or other personal property which may be on such premises for the purpose of drilling a well or for other similar temporary uses) and including any and all wellbores, oil wells, gas wells, injection wells or other wells, structures, fuel separators, liquid extraction plants, plant compressors, pumps, pumping units, pipelines, sales and flow lines, gathering systems, field gathering systems, salt water disposal facilities, tanks and tank batteries, fixtures, valves, fittings, machinery and parts, engines, boilers, steam generation facilities, meters, apparatus, equipment, appliances, tools, implements, cables, wires, towers, casing, tubing and rods, surface leases, rights-of-way, easements, servitudes licenses and other surface and subsurface rights, together with all additions, substitutions, replacements, accessions and attachments to any and all of the foregoing.

"Organizational Documents" means, relative to any Person, its certificate or articles of organization, formation or incorporation (or comparable document) and its by-laws, partnership agreement, limited liability company agreement or operating agreement (or similar arrangements applicable to ownership).

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Other Secured Debt" means any debt described in Section 9.02(p).

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security

interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 5.04 or Section 5.05).

"Overnight Bank Funding Rate" means, for any day, the rate comprised of both overnight federal funds and overnight LIBOR borrowings by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on the Federal Reserve Bank of New York's Website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

"Parent Entity" means any direct or indirect parent of the Borrower.

"Participant" has the meaning assigned to such term in Section 12.04(c).

"Participant Register" has the meaning assigned to such term in Section 12.04(c).

"Payment in Full" means (a) the Commitments have expired or been terminated, (b) the principal of and interest on each Loan and all fees payable hereunder and all other amounts payable under the Loan Documents shall have been indefeasibly paid in full in cash (other than contingent indemnification obligations), (c) all Letters of Credit shall have expired or terminated (or are cash collateralized or otherwise arrangements in respect of which have been made to the satisfaction of the applicable Issuing Bank) and all LC Disbursements shall have been reimbursed, and (d) all amounts due under Secured Swap Agreements shall have been indefeasibly paid in full in cash (or such Secured Swap Agreements have been cash collateralized or otherwise arrangements in respect of which have been made, to the satisfaction of the applicable Secured Swap Party).

"PBGC" means the Pension Benefit Guaranty Corporation and any Person succeeding to any or all of its functions under ERISA.

"Permitted Additional Debt" means any unsecured senior, senior subordinated or subordinated Indebtedness issued by the Borrower or any other Credit Party pursuant to Section 9.02(v) herein, (a) the terms of which do not provide for any scheduled repayment, mandatory redemption or sinking fund obligation before the 91st day after the Maturity Date (other than customary offers to purchase upon a change of control, asset sale or casualty or condemnation event and customary acceleration rights after an event of default), (b) if such Indebtedness is senior subordinated or subordinated Indebtedness, the terms of such Indebtedness provide for customary subordination of such Indebtedness to the Obligations, and (c) as to which no Subsidiary (other than a Credit Party) is an obligor under such Indebtedness.

"Permitted Investments" means any of the following types of Investments, to the extent owned by the Borrower or any Restricted Subsidiary:

(i) Dollars;

(ii) securities issued or directly and fully and unconditionally guaranteed or insured by the United States government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of the U.S. government, in each case with maturities of 24 months or less from the date of acquisition;

(iii) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers' acceptances with maturities not exceeding one year and overnight bank deposits, in each case with any domestic commercial bank having capital and surplus of not less than $500,000,000 or any foreign commercial bank having capital and surplus of not less than $1,000,000,000 (or the Dollar equivalent as of the date of determination);

(iv) repurchase obligations for underlying securities of the types described in clauses (ii), (iii) and (vii) entered into with any financial institution meeting the qualifications specified in clause (iii) above;

(v) commercial paper rated at least P-2 by Moody's or at least A-2 by S&P and in each case maturing within 24 months after the date of creation thereof and Indebtedness or preferred Stock issued by Persons with a rating of "A" or higher from S&P or "A2" or higher from Moody's with maturities of 24 months or less from the date of acquisition;

(vi) marketable short-term money market and similar securities having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Borrower) and in each case maturing within 24 months after the date of creation or acquisition thereof;

(vii) readily marketable direct obligations issued by any state, commonwealth or territory of the United States or any political subdivision or taxing authority thereof having a rating of Baa3 or higher from Moody's or BBB- or higher from S&P with maturities of 24 months or less from the date of acquisition;

(viii) Investments with average maturities of 24 months or less from the date of acquisition in money market funds rated within the top three ratings category by S&P or Moody's; and

(ix) investment funds investing 90.00% of their assets in securities of the types described in clauses (i) through (viii) above.

Notwithstanding the foregoing, Permitted Investments shall include amounts denominated in currencies other than Dollars, if such amounts are converted into Dollars as promptly as practicable and in any event within ten Business Days following the receipt of such amounts.

"Permitted Investors" means (a) Franklin Advisers, Inc., (b) Fidelity Management and Research Company LLC, (c) PGIM, Inc., (d) Blackrock Inc., (e) Appaloosa LP, (f) DE Shaw & Co., L.P. (g) Capital Research and Management Company, (h) CarVal Investors LLC on behalf of the fund entities it manages, (i) Glendon Capital Management L.P., (j) Oaktree Capital Group, LLC and (k) any Affiliates and any investment funds advised, co-advised, managed or co-managed by any of the foregoing.

"Permitted Lien" means any Lien permitted under Section 9.03.

"Permitted Refinancing Indebtedness" means, with respect to any Indebtedness (the "Refinanced Indebtedness"), any Indebtedness issued or incurred in exchange for, or the net proceeds of which are used (or held for use and in fact used within 90 days of receipt thereof) to modify, extend, refinance, renew, replace or refund (or to refund to the Borrower any amounts repaid, repurchased or prepaid in respect of Indebtedness within 90 days before the incurrence of such Indebtedness) in whole or in part (collectively to "Refinance" or a "Refinancing" or "Refinanced"), such Refinanced Indebtedness (or previous refinancing thereof constituting Permitted Refinancing Indebtedness), if (A) the principal amount (or accreted value, if applicable) of any such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Refinanced Indebtedness outstanding immediately before such Refinancing except by an amount equal to the unpaid accrued interest and premium thereon *plus* other amounts paid and fees and expenses incurred in connection with such Refinancing *plus* an amount equal to any existing commitment unutilized and letters of credit undrawn thereunder, (B) if the Indebtedness being Refinanced is Indebtedness permitted by Section 9.02(b), the direct and contingent obligors with respect to such Permitted Refinancing Indebtedness are not changed (except that a Credit Party may be added as an additional obligor), (C) other than with respect to a Refinancing in respect of Indebtedness permitted pursuant to Section 9.02(c), such Permitted Refinancing Indebtedness shall have a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Refinanced Indebtedness, and (D) if the Indebtedness being Refinanced is Indebtedness permitted by Section 9.02(b), terms and conditions of any such Permitted Refinancing Indebtedness, taken as a whole (excluding terms as to interest rates, fees, floors, funding discounts and redemption or prepayment premiums), are either (A) reasonably satisfactory to the Administrative Agent, or (B) either (1) not be materially more restrictive, taken as a whole, to the Borrower and its Restricted Subsidiaries, than the Loan Documents (or the Lenders receive the benefit of the more restrictive terms which, for avoidance of doubt, may be provided to them without their consent), or (2) apply after the Maturity Date; *provided* that if a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent at least five Business Days before the incurrence or issuance of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the foregoing requirement shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Petition Date" has the meaning assigned to such term in the recitals hereto.

"Petroleum Industry Standards" means the Definitions for Oil and Gas Reserves promulgated by the Society of Petroleum Engineers (or any generally recognized successor) as in effect at the time in question.

"Plan" means any single-employer plan, as defined in Section 4001 of ERISA and subject to Title IV of ERISA, that is or was within any of the preceding six years maintained or contributed to (or to which there is or was an obligation to contribute or to make payments to) by the Borrower

or a Subsidiary, or with respect to which the Borrower or a Subsidiary has liability, including on account of an ERISA Affiliate.

"Plan Effective Date" means the "Effective Date" as defined in the Plan of Reorganization.

"Plan of Reorganization" has the meaning assigned to such term in the recitals hereto.

"Post-Default Rate" has the meaning assigned to such term in Section 3.02(c).

"Pre-Petition Credit Agreement" has the meaning assigned to such term in the recitals hereto.

"Prime Rate" means the rate of interest last quoted by *The Wall Street Journal* as the "Prime Rate" in the U.S. or, if *The Wall Street Journal* ceases to quote such rate, the highest *per annum* interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as reasonably determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as reasonably determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

"Pro Forma Basis" means, with respect to compliance with any test or covenant or calculation of any ratio (or any component thereof) hereunder in connection with any incurrence, Investment, acquisition, Disposition, consolidation, merger, designation, assumption, payment or any other transaction, a determination or calculation of such test, covenant or ratio (or component) that is made (a) in good faith by the chief financial officer, principal accounting officer or treasurer of the Borrower and reasonably acceptable to the Administrative Agent, (b) other than for purposes of calculating the Consolidated Secured Indebtedness Coverage Ratio, as of the last day of the most recently ended Rolling Period as if the relevant incurrence, Investment, acquisition, Disposition, consolidation, merger, designation, assumption, payment or other transaction had occurred on the first day of such Rolling Period, (c) at the option of the Borrower, giving effect to any anticipated or proposed change in operations, revenues, expenses or other items included in the computation of EBITDAX, but in the case of this clause (c), for any Rolling Period, the aggregate amount of such adjustments added back in determining EBITDAX for such Rolling Period shall not exceed 5% of the EBITDAX for such Rolling Period and (d) for purposes of calculating the Consolidated Secured Indebtedness Coverage Ratio, as of the most recently occurring Coverage Ratio Test Date, giving effect to the adjustments provided for in the last sentence of the defined term "Total PDP PV-10" and as if the relevant incurrence, assumption, payment or other transaction had occurred on such Coverage Ratio Test Date.

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, including cash, securities, accounts and contract rights.

"Proposed Acquisition" has the meaning assigned to such term in Section 9.18(a)(iii).

"Proposed Borrowing Base" has the meaning assigned to such term in Section 2.07(c)(i).

"Proposed Borrowing Base Notice" has the meaning assigned to such term in Section 2.07(c)(ii).

"Proved Developed Producing Reserves" means oil and gas mineral interests that, in accordance with Petroleum Industry Standards, are classified as both "Proved Reserves" and "Developed Producing Reserves."

"Proved Reserves" means oil and gas reserves that, in accordance with Petroleum Industry Standards, are classified as both "Proved Reserves" and one of the following: (a) "Developed Producing Reserves," (b) "Developed Non-Producing Reserves," or (c) "Undeveloped Reserves."

"PTE" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"Public Lender" has the meaning set forth in Section 8.01.

"PV-10" means the present value of the Credit Parties' Oil and Gas Properties or Borrowing Base Properties, as the case may be (calculated before federal and state income taxes (but not other taxes customarily included in such calculation, including sales, ad valorem and severance taxes)), discounted at 10% per annum, of the future net revenues expected to accrue to the Credit Parties' collective interests in such reserves during the remaining expected economic lives of such reserves, calculated in a manner consistent with past practice and other than in respect of calculating the Total PDP PV-10 (which shall be calculated using the Ten-Year Strip Price), shall be calculated using the Administrative Agent's Bank Price Deck.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. § 5390(c)(8)(D).

"QFC Credit Support" has the meaning set forth in Section 12.18.

"Qualified ECP Counterparty" means, in respect of any CFTC Hedging Obligation, the Borrower and each Guarantor to the extent that such Person (a) has total assets exceeding $10,000,000 at the time any guaranty of obligations under such CFTC Hedging Obligation or any grant of a security interest to secure such CFTC Hedging Obligation becomes effective or (b) otherwise constitutes an "eligible contract participant" with respect to such Swap Agreement under the Commodity Exchange Act and can cause another Person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Qualifying VPP" means (a) each VPP existing on the Effective Date and (b) any VPP granted by a Group Member or Group Members (the "VPP Seller") to the purchaser of the VPP (the "VPP Buyer"); if (i) no portion of the working or other interests in oil and gas properties burdened by the VPP (the "VPP Properties") constitute Collateral, (ii) the consideration for such VPP consists only of cash or cash equivalents, (iii) any obligation of any Group Member to purchase the VPP Buyer's share of production is at a fair market index price in effect from time to time (adjusted for shrinkage and transportation costs, as applicable), (iv) any Liens securing the VPP or any related obligations of the VPP Seller to the VPP Buyer are limited to the VPP Seller's retained interests in the VPP Properties and the production therefrom and its rights, titles and interests related thereto, and

(v) no Default or Event of Default shall have occurred and be continuing at the time of the grant of the VPP or shall result therefrom.

"Real Estate Financing" means any Indebtedness incurred or issued by the Borrower or any of its Restricted Subsidiaries (including pursuant to any lease arrangements) in respect of (or secured by) any rights and interests held by the Borrower or any of its Restricted Subsidiaries in the Borrower's and its Restricted Subsidiaries' headquarters and field offices and customary ancillary assets, including accessions thereto and proceeds thereof (the "Real Estate Financing Assets").

"Real Estate Financing Assets" has the meaning given to such term within the definition of "Real Estate Financing".

"Recipient" means (a) the Administrative Agent, (b) the Collateral Agent, (b) any Lender, and (c) any Issuing Bank, as applicable.

"Redemption" means with respect to any Indebtedness, the repurchase, redemption, prepayment, repayment, defeasance or any other acquisition or retirement for value (or the segregation of funds with respect to any of the foregoing) of such Indebtedness. "Redeem" has the correlative meaning thereto.

"Redetermination Date" means, with respect to any Scheduled Redetermination or any Interim Redetermination, the date that the redetermined Borrowing Base related thereto becomes effective pursuant to Section 2.07(d).

"Reference Time" with respect to any setting of the then-current Benchmark means (1) if such Benchmark is USD LIBOR, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, and (2) if such Benchmark is not USD LIBOR, the time determined by the Administrative Agent in its reasonable discretion.

"Register" has the meaning assigned to such term in Section 12.04(b)(iv).

"Regulation D" means Regulation D of the Board, as the same may be amended, supplemented or replaced from time to time.

"Regulation T" means Regulation T of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Regulation U" means Regulation U of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Regulation X" means Regulation X of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors (including attorneys, accountants and experts) of such Person and such Person's Affiliates.

"Release" means any depositing, spilling, leaking, pumping, pouring, placing, emitting, discarding, abandoning, emptying, discharging, injecting, escaping, leaching, dumping, or disposing.

"Relevant Governmental Body" means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

"Remedial Work" has the meaning assigned to such term in Section 8.10(a).

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30-day notice period has been waived.

"Required Lenders" means, (a) at any time while no Tranche A Loan or LC Exposure is outstanding, Non-Defaulting Lenders having at least sixty-six and two-thirds percent (66-2/3%) of the Total Tranche A Commitments of all Non-Defaulting Lenders, (b) at any time while any Tranche A Loan or LC Exposure is outstanding, Non-Defaulting Lenders holding at least sixty-six and two-thirds percent (66-2/3%) of the outstanding aggregate principal amount of the Tranche A Loans and participation interests in Letters of Credit of all Non-Defaulting Lenders (in each case without regard to any sale by a Non-Defaulting Lender of a participation in any Tranche A Loan under Section 12.04(c)), and (c) at any time while no Tranche A Loans, LC Exposure or Tranche A Commitments are outstanding, Lenders having or holding at least sixty-six and two-thirds percent (66-2/3%) of the outstanding aggregate principal amount of the Tranche B Loans.

"Required Swaps" has the meaning assigned to such term in Section 8.19.

"Requirement of Law" means, as to any Person, any law, treaty, rule, regulation statute, order, ordinance, decree, judgment, consent decree, writ, injunction, settlement agreement or governmental requirement enacted, promulgated or imposed or entered into or agreed by any Governmental Authority, in each case applicable to or binding upon such Person or any of its property or assets or to which such Person or any of its property or assets is subject.

"Reserve Report" means the Initial Reserve Report and each subsequent report, in form and substance reasonably satisfactory to the Administrative Agent, setting forth, as of the dates set forth in Section 8.12(a) (or such other date in the event of an Interim Redetermination or such other acquisition or Investment as contemplated under Section 2.07(f)), the oil and gas reserves attributable to the Oil and Gas Properties of the Borrower and the other Credit Parties (other than VPP Properties or Oil and Gas Properties that are uneconomic based upon the pricing assumptions consistent with the most recent Bank Price Deck provided by the Administrative Agent to the Borrower), together with a projection of the rate of production and future net income, taxes, operating expenses and capital expenditures with respect thereto as of such date, based upon the pricing assumptions consistent with the most recent Bank Price Deck provided by the Administrative Agent to the Borrower.

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Responsible Officer" means as to any Person, the President, the Chief Executive Officer, the Chief Financial Officer, the Treasurer, the Assistant Treasurer, the General Counsel, any Senior Vice President or any Executive Vice President of such Person (or, in the case of any limited partnership without its own officers, any of the foregoing of the general partner of such limited partnership). Any document delivered hereunder that is signed by a Responsible Officer shall be conclusively presumed to have been authorized by all necessary corporate, limited liability company, partnership and/or other action on the part of any Credit Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Person. Unless otherwise specified, all references to a Responsible Officer herein mean a Responsible Officer of the Borrower.

"Restricted Payment" has the meaning assigned to such term in Section 9.04.

"Restricted Subsidiary" means any Subsidiary of the Borrower that is not an Unrestricted Subsidiary.

"Restructuring Support Agreement" means that certain Restructuring Support Agreement, dated as of June 28, 2020, by and among the Consenting Stakeholders (as defined therein), the Borrower and the other Company Parties (as defined therein) party thereto, as amended, supplemented, restated, replaced or modified from time to time.

"Restructuring Transactions" means, collectively, the transactions that are set forth on Schedule 9.06(q).

"Reuters" means, as applicable, Thomson Reuters Corp., Refinitiv, or any successor thereto.

"Revolving Credit Exposure" means, with respect to any Tranche A Lender at any time, the sum of the outstanding principal amount of such Lender's Tranche A Loans and its LC Exposure at such time.

"Rolling Period" means, subject to the last paragraph of the definition of "EBITDAX", for the end of any fiscal quarter, the period of four (4) consecutive fiscal quarters ending on the last day of such fiscal quarter.

"S&P" means Standard & Poor's Rating Services, a Standard & Poor's Financial Services LLC business and any successor thereto that is a nationally recognized rating agency.

"Sanctioned Country" means, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea and Syria).

"Sanctioned Person" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union or any member state thereof, Her Majesty's Treasury of the United Kingdom, or any other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

"Sanctions" means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State, or (b) the United Nations Security Council, the European Union (or any member state thereof), Her Majesty's Treasury of the United Kingdom.

"Scheduled Redetermination" has the meaning assigned to such term in Section 2.07(b).

"Scheduled Swap Agreements" means the Swap Agreements of the Credit Parties included in the most recently delivered Swap Schedule delivered pursuant to Section 8.12 or, before the delivery of the first such Swap Schedule, the Initial Swap Schedule. For the avoidance of doubt, if on any date a Swap Agreement included in the most recent Swap Schedule has been terminated or no Credit Party is a party thereto, then such Swap Agreement is no longer a Scheduled Swap Agreement.

"SEC" means the Securities and Exchange Commission or any successor Governmental Authority.

"Secured Indebtedness" shall mean for Borrower and the other Credit Parties, the sum of the following, as of the date of measurement:

(a) the outstanding principal balance of the Loans, *plus*

(b) the face amount of all drawn letters of credit issued for the account of such Person (or for which such Person is liable) and without duplication, all drafts drawn thereunder and all reimbursement or payment obligations with respect to drawn letters of credit and other similar instruments issued by such Person (or for which such Person is liable) (to the extent not cash collateralized or backstopped by a letter of credit or similar instrument), *plus*

(c) the principal portion of Indebtedness attributable to Capital Leases and Indebtedness secured by purchase money Liens as of the date of measurement, *plus*

(d) the principal portion of other secured Indebtedness for borrowed money of the Credit Parties as of the date of measurement that is then secured by Liens on Collateral that are *pari passu* with or senior or junior to the Liens securing the Obligations.

"Secured Parties" means, collectively, the Administrative Agent, the Collateral Agent, each Issuing Bank, each Lender, each Treasury Management Lender and each Secured Swap Parties, and "Secured Party" means any of them individually.

"Secured Swap Agreement" means a Swap Agreement between (a) any Credit Party, and (b) a Secured Swap Party, which shall include, for the avoidance of doubt, the Existing Secured Swap Agreements.

"Secured Swap Obligations" means Obligations referred to in clause (b) of the definition of Obligations.

"Secured Swap Party" means, with respect to any Swap Agreement, (a) any Person who is an Approved Counterparty under clause (a) of the definition thereof and who is the counterparty to such Swap Agreement with a Credit Party, (b) any Person who was a Lender or an Affiliate of a Lender at the time when such Person entered into such Swap Agreement (or, with respect to any Existing Secured Swap Agreement, as of the Effective Date), including by way of novation, assignment, or other transfer, who is a counterparty to any such Swap Agreement with a Credit Party; *provided* that any such Secured Swap Party that ceases to be a Lender or an Affiliate of a Lender shall continue to be a "Secured Swap Party" for purposes of the Loan Documents to the extent that such Secured Swap Party entered into a Secured Swap Agreement with the Borrower or any other Credit Party prior to the date hereof or at the time such Secured Swap Party was a Lender (or Affiliate of a Lender) hereunder and such Secured Swap Agreement remains in effect and there are remaining obligations under such Secured Swap Agreement (but excluding any transactions, confirms, or trades entered into after such Person ceases to be a Lender or an Affiliate of a Lender) (it being understood that if such Swap Agreement is novated or otherwise transferred by such Person to a third party that is not a Lender or an Affiliate of a Lender, such third party shall not constitute a Secured Swap Party) and (c) any Person who is an Approved Counterparty under clause (b) of the definition thereof and who is party to an Acceptable Hedge Intercreditor Agreement.

"Securities Account" shall have the meaning set forth in Article 9 of the UCC or other applicable law.

"Security Agreement" means (a) the Guaranty and Collateral Agreement and (b) any other security agreement entered into by the Credit Parties in favor of the Collateral Agent for the benefit of the Secured Parties in a form reasonably acceptable to the Collateral Agent.

"Security Instruments" means the Mortgages, deeds of trust, pledge agreements, Security Agreements, control agreements, Acceptable Collateral Trust Agreements, Acceptable Intercreditor Agreements, Acceptable Hedge Intercreditor Agreements, and other agreements, instruments or supplements described or referred to in Exhibit E, and any and all other agreements, instruments, supplements, or consents now or hereafter executed and delivered by the Borrower or any other Credit Party (other than Secured Swap Agreements or participation or similar agreements between any Lender and any other lender or creditor with respect to any Obligations pursuant to this Agreement), in each case in connection with, or in order to guarantee or provide collateral security for the payment or performance of the Obligations, the Loans, the Notes, this Agreement or reimbursement obligations under the Letters of Credit, as such agreements may be amended, modified, supplemented or restated from time to time.

"SOFR" means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator's Website on the immediately succeeding Business Day.

"SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"SOFR Administrator's Website" means the website of the Federal Reserve Bank of New York, currently at http://www.newyorkfed.org, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"Solvent" means, with respect to any Person, that as of any date of determination, that (i) the sum of the debt (including contingent liabilities) of such Person its subsidiaries, taken as a whole, does not exceed the fair value of the assets of such Person and its subsidiaries, taken as a whole; (ii) the capital of such Person and its subsidiaries, taken as a whole, is not unreasonably small in relation to the business of such Person or its subsidiaries, taken as a whole, contemplated as of the date hereof; and (iii) such Person and its subsidiaries, taken as a whole, do not intend to incur, or believe that they will incur, debts (including current obligations and contingent liabilities) beyond their ability to pay such debts as they mature in the ordinary course of business. For the purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Specified Additional Debt" has the meaning assigned to such term in Section 2.07(f).

"Specified Period" has the meaning assigned to such term in the definition of "Free Cash Flow".

"Specified Subsidiary" means, at any date of determination any Restricted Subsidiary (a) whose total assets at the last day of the Rolling Period ending on the last day of the most recent fiscal period for which financial statements have been delivered pursuant to Section 8.01(a) or Section 8.01(b) have been delivered were equal to or greater than 15% of the Adjusted Consolidated Net Tangible Assets of the Borrower and the Restricted Subsidiaries at such date, or (b) whose revenues during such Rolling Period were equal to or greater than 15% of the consolidated revenues of the Borrower and the Restricted Subsidiaries for such period, in each case determined in accordance with GAAP.

"Statutory Reserve Rate" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Federal Reserve Board to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D). Such reserve percentage shall include those imposed pursuant to Regulation D. LIBOR Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Stock" means any and all shares of capital stock or shares in the capital, as the case may be (whether denominated as common stock or preferred stock or ordinary shares or preferred shares, as the case may be), beneficial, partnership or membership interests, participations or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity, whether voting or non-voting.

"Stock Equivalents" means all securities convertible into or exchangeable for Stock and all warrants, options or other rights to purchase or subscribe for any Stock, whether or not presently convertible, exchangeable or exercisable.

"subsidiary" means as to any Person, a corporation, partnership, limited liability company or other entity of which shares of Stock or other ownership interests having ordinary voting power (other than Stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise expressly provided, all references herein to a "Subsidiary" means a Subsidiary of the Borrower.

"Subsidiary" means, unless stated otherwise, any subsidiary of the Borrower.

"Supported QFC" has the meaning set forth in Section 12.18.

"Swap Agreement" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement, whether exchange traded, "over-the-counter" or otherwise, involving, or settled by reference to, one or more rates, currencies, commodities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; *provided* that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or the other Credit Parties shall be a Swap Agreement. If multiple transactions are entered into under a master agreement, each transaction is a separate Swap Agreement.

"Swap PV" means, with respect to any Swap Agreement, the present value, discounted at 10% per annum, of the future receipts expected to be paid to the Borrower or its Restricted Subsidiaries under such Swap Agreement netted against the Administrative Agent's then-current Bank Price Deck; *provided* that the "Swap PV" shall never be less than $0.00.

"Swap Schedule" means any report, in form and substance reasonably satisfactory to the Administrative Agent, setting forth, as of a date on or about the date of delivery of the Reserve Report delivered in connection with each of the Initial Redetermination Date, each Scheduled Redetermination and each Interim Redetermination, the terms, counterparty and Swap PV of all Swap Agreements of the Credit Parties with an Approved Counterparty on such date.

"Swap Termination Value" means, in respect of any one or more Swap Agreements, after taking into account the effect of any netting agreement relating to such Swap Agreements, (a) for any date on or after the date such Swap Agreement has been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date before the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Agreement, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreement (including any Lender or any Affiliate of a Lender).

"Taxes" means any and all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other similar charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Ten-Year Strip Price" means, as of any date, (a) for the 120-month period commencing with the month in which such date occurs, as quoted on the New York Mercantile Exchange (the "NYMEX") adjusted for applicable differentials (based on average of last twelve (12) months actuals) and hedge agreements and published in a nationally recognized publication for such pricing reasonably acceptable to the Administrative Agent (as such prices may be corrected or revised from time to time by the NYMEX in accordance with its rules and regulations), the corresponding monthly quoted futures contract price for such months 0–120, and (b) for periods after such 120 month period, the average corresponding monthly quoted futures contract price for months 108-120.

"Term SOFR" means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"Term SOFR Notice" means a notification by the Administrative Agent to the Lenders and the Borrower of the occurrence of a Term SOFR Transition Event.

"Term SOFR Transition Event" means the determination by the Administrative Agent that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, (b) the administration of Term SOFR is administratively feasible for the Administrative Agent and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable, has previously occurred resulting in the replacement of the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.03 with a Benchmark Replacement the Unadjusted Benchmark Replacement component of which is not Term SOFR,

"Termination Date" means the earlier of the Maturity Date and the date of termination of the Commitments.

"Test Quarter" has the meaning set forth in Section 8.19.

"Total PDP PV-10" means, as of any date of determination, the sum of (i) PV-10 of the Credit Parties' Oil and Gas Properties characterized as Proved Developed Producing reserves, and (ii) the estimated market value of the Credit Parties' hedge position, discounted using an annual discount rate of 10%. Each calculation of such Total PDP PV-10 shall be made (a) using the Ten-Year Strip Price adjusted in a manner reasonably acceptable to the Administrative Agent for any basis differential, quality and gravity, (b) using costs as of the date of estimation without future escalation, and without giving effect to non-property related expenses such as general and administrative expenses, debt service, future income tax expense and depreciation, depletion and amortization, and (c) to the extent not otherwise specified in the preceding clauses of this sentence, using reasonable economic assumptions consistent with such clauses. Total PDP PV-10 shall be calculated on a pro forma basis, giving effect to (i) acquisitions and Dispositions of Oil and Gas Properties consummated by the Borrower and the other Credit Parties since the date of the Reserve

Report most recently delivered to the Administrative Agent (*provided* that, in the case of any acquisition of Oil and Gas Properties, the Administrative Agent shall have received a Reserve Report, in form and substance reasonably satisfactory to it, evaluating the Proved Developed Producing Reserves attributable thereto) and (ii) the unwind, monetization or termination of, or the entry into, any hedge agreement to which a Credit Party is a party, in each case occurring since the date of the Reserve Report most recently delivered to the Administrative Agent.

"Total Tranche A Commitments" means, at any time, the aggregate Tranche A Commitments of all the Tranche A Lenders. As of the Effective Date, the Total Tranche A Commitment is $1,750,000,000.

"Tranche A Borrowing" means Tranche A Loans of the same Type, made, converted or continued on the same date and, in the case of LIBOR Loans, as to which a single Interest Period is in effect.

"Tranche A Commitment" means (a) with respect to each Lender that is a Lender on the Effective Date, the amount set forth opposite such Lender's name on Annex I as such Lender's "Tranche A Commitment," and (b) in the case of any Lender that becomes a Lender after the Effective Date, the amount specified as such Lender's "Tranche A Commitment" in the Assignment and Assumption pursuant to which such Lender assumed a portion of the Total Tranche A Commitment, in each case, as the same may be changed from time to time pursuant to the terms of this Agreement.

"Tranche A Lender" means a Lender having a Tranche A Commitment or an outstanding Tranche A Loan.

"Tranche A Loan" means a Loan made pursuant to Section 2.01(a).

"Tranche A Termination Date" means February 9, 2024.

"Tranche B Borrowing" means Tranche B Loans of the same Type, made, converted or continued on the same date and, in the case of LIBOR Loans, as to which a single Interest Period is in effect.

"Tranche B Commitment" means, with respect to each Lender, the Commitment, if any, of such Lender to make a Tranche B Loan on the Effective Date, expressed as an amount representing the principal amount of the Tranche B Loan to be made by such Lender on the Effective Date, it being understood that such Commitment will be terminated upon the making of such Tranche B Lender's Tranche B Loan or as otherwise provided in Section 2.06.

"Tranche B Lender" means a Lender having a Tranche B Commitment or an outstanding Tranche B Loan.

"Tranche B Loan" means a Loan made pursuant to Section 2.01(b).

"Tranche B Maturity Date" means February 7, 2025.

"Transaction Expenses" means any fees or expenses incurred or paid by the Borrower or any Subsidiary or any of their Affiliates in connection with the Transactions and the Loan Documents.

"Transactions" means, (a) with respect to the Borrower, (i) the execution, delivery and performance by the Borrower of this Agreement and each other Loan Document to which it is a party, (ii) the borrowing of Loans and the issuance of Letters of Credit hereunder, and (iii) the grant of Liens by the Borrower on Mortgaged Properties and other Collateral pursuant to the Security Instruments, (b) with respect to each Guarantor, (i) the execution, delivery and performance by such Guarantor of each Loan Document to which it is a party, (ii) the guaranteeing of the Obligations by such Guarantor and (iii) the grant by such Guarantor of Liens on Mortgaged Properties and other Collateral pursuant to the Security Instruments and (c) the effectiveness and consummation of the Plan of Reorganization pursuant to the Confirmation Order.

"Treasury Management Agreement" means any agreement to provide cash management services, including treasury, depositing, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements, which shall include, for the avoidance of doubt, the Existing Treasury Management Agreements.

"Treasury Management Lender" means (a) any Person that, at the time it enters into a Treasury Management Agreement, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Treasury Management Agreement, and (b) any counterparty to an Existing Treasury Management Agreement.

"Type", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the ABR or the Adjusted LIBO Rate.

"UCC" means the Uniform Commercial Code, as in effect from time to time, of the State of New York or of any other state the laws of which are required as a result thereof to be applied in connection with the attachment, perfection or priority of, or remedies with respect to, the Administrative Agent's or any other Secured Party's Lien on any Collateral.

"UK Financial Institutions" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"Undrawn Amount" means, at any time, with respect to any Letter of Credit, the maximum amount that may be drawn under such Letter of Credit after giving effect to (a) all provisions in

such Letter of Credit providing for future automatic increases in the amount that may be drawn under such Letter of Credit (regardless of whether such automatic increases have then occurred at such time), and (b) any amounts previously drawn under such Letter of Credit.

"Unrestricted Subsidiary" means (a) any Subsidiary of the Borrower designated as such on Schedule 7.14 as of the Effective Date, (b) any Subsidiary of the Borrower which the Borrower has designated in writing to the Administrative Agent to be an Unrestricted Subsidiary in accordance with Section 9.14, and (c) any subsidiary of an Unrestricted Subsidiary.

"USD LIBOR" means the London interbank offered rate for U.S. dollars.

"U.S. Person" means any person that is a "United States person" as defined in Code Section 7701(a)(30).

"U.S. Special Resolution Regimes" has the meaning set forth in Section 12.18.

"U.S. Tax Compliance Certificate" has the meaning assigned to such term in Section 5.03(g)(ii)(B)(3).

"VPP" means the sale of limited-term overriding royalty interests in natural gas and/or oil reserves that (a) entitle the purchaser to receive scheduled production volumes over a period of time from specific lease interests; (b) are free and clear of all associated future production costs and capital expenditures; (c) are nonrecourse to the seller (i.e., the purchaser's only recourse is to the reserves acquired); (d) transfer title of the reserves to the purchaser; and (e) allow the seller to retain all production beyond the specified volumes, if any, after the scheduled production volumes have been delivered.

"VPP Buyer" has the meaning set forth in the definition of "Qualifying VPP".

"VPP Properties" has the meaning set forth in the definition of "Qualifying VPP".

"VPP Seller" has the meaning set forth in the definition of "Qualifying VPP".

"Weighted Average Life to Maturity" means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then-remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness.

"Wholly-Owned Material Subsidiary" means each Material Subsidiary that is a Wholly-Owned Subsidiary.

"Wholly-Owned Subsidiary" means any Restricted Subsidiary of which all of the outstanding Stock (other than any directors' qualifying shares or shares that are required by the applicable laws and regulations of the jurisdiction of organization of such Subsidiary to be owned by the government of such jurisdiction or individual corporate citizens of such jurisdiction), on a

fully-diluted basis, are owned by the Borrower and/or one or more of its Wholly-Owned Subsidiaries.

"Withholding Agent" means the Borrower, any Guarantor or the Administrative Agent.

"Write-Down and Conversion Powers" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.03 **Types of Loans and Borrowings**. For purposes of this Agreement, Loans and Borrowings, respectively, may be classified and referred to by Type (*e.g.*, a "LIBOR Loan" or a "LIBOR Borrowing") or by Class.

Section 1.04 **Terms Generally; Rules of Construction**. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" as used in this Agreement shall be deemed to be followed by the phrase "without limitation". The word "or" is not exclusive. The word "shall" shall be construed to have the same meaning and effect as the word "will". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein (including in the schedules and exhibits attached hereto) shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, restatements, amendments and restatements, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in the Loan Documents), (b) any reference herein to any law shall be construed as referring to such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, (c) any reference herein to any Person shall be construed to include such Person's successors and assigns (subject to the restrictions contained in the Loan Documents), (d) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) with respect to the determination of any time period, the word "from" means "from and including" and the word "to" means "to and including", (f) any reference herein to Articles, Sections, Annexes, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Annexes, Exhibits and Schedules to, this Agreement and (g) with respect to the requirement to deliver any certificate, an executed paper copy of such certificate shall accompany any other form of delivery permitted hereunder. The use of the phrase "subject to" as used in connection with Excepted Liens or otherwise and the permitted existence of any Excepted Liens or any other Liens shall not be interpreted to expressly or impliedly subordinate any Liens granted in

favor of the Administrative Agent and the other Secured Parties as there is no intention to subordinate the Liens granted in favor of the Administrative Agent and the other Secured Parties. No provision of this Agreement or any other Loan Document shall be interpreted or construed against any Person solely because such Person or its legal representative drafted such provision.

Section 1.05 **Accounting Terms and Determinations; GAAP**.

(a) Unless otherwise specified herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; *provided* that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Majority Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to (i) any election under Financial Accounting Standards Board Accounting Standards Codification 825 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any Subsidiary at "fair value", as defined therein and (ii) any treatment of Indebtedness under Accounting Standards Codification 470-20 or 2015-03 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof.

(b) Notwithstanding anything to the contrary contained in Section 1.05(a) or in the definition of "Capital Lease," any change in accounting for leases pursuant to GAAP resulting from the adoption of Financial Accounting Standards Board Accounting Standards Update No. 2016-02, Leases (Topic 842) ("FAS 842"), to the extent such adoption would require treating any lease (or similar arrangement conveying the right to use) as a capital lease where such lease (or similar arrangement) would not have been required to be so treated under GAAP as in effect on December 15, 2019, such lease shall not be considered a capital lease, and all calculations and deliverables (other than financial statements prepared in accordance with then-current GAAP requirements) under this Agreement or any other Loan Document shall be made or delivered, as applicable, in accordance therewith.

Section 1.06 **Interest Rates; LIBOR Notification**. The interest rate on LIBOR Loans is determined by reference to LIBOR, which is derived from the London interbank offered rate. The London interbank offered rate is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. In July 2017, the U.K. Financial Conduct Authority announced that, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions to the ICE Benchmark Administration (together with any successor to the ICE Benchmark Administrator, the "IBA") for purposes of the IBA setting the London interbank offered rate. As a result, it is possible that commencing in 2022, the London interbank offered rate may no longer be available or may no

longer be deemed an appropriate reference rate upon which to determine the interest rate on LIBOR Loans. In light of this eventuality, public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of the London interbank offered rate. Upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, Section 3.03 provides a mechanism for determining an alternative rate of interest. The Administrative Agent will promptly notify the Borrower, pursuant to Section 3.03, of any change to the reference rate upon which the interest rate on LIBOR Loans is based. However, the Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to the London interbank offered rate or other rates in the definition of "LIBOR" or with respect to any alternative or successor rate thereto, or replacement rate thereof (including, without limitation, (a) any such alternative, successor or replacement rate implemented pursuant to Section 3.03(b), whether upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, and (b) the implementation of any Benchmark Replacement Conforming Changes pursuant to Section 3.03(b)), including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the LIBOR or have the same volume or liquidity as did the London interbank offered rate prior to its discontinuance or unavailability.

Section 1.07 **Letter of Credit Amount**. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the amount of such Letter of Credit available to be drawn at such time; provided that with respect to any Letter of Credit that, by its terms or the terms of any Letter of Credit Agreement related thereto, provides for one or more automatic increases in the available amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum amount is available to be drawn at such time.

Section 1.08 **Divisions**. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized and acquired on the first date of its existence by the holders of its Stock at such time.

Section 1.09 **Timing of Payment or Performance**. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than any such payment due on the Maturity Date) or performance shall extend to the immediately succeeding Business Day.

Section 1.10 **Rounding**. Any financial ratios or compliance thresholds required to be maintained or complied with by the Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under this Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more

than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

ARTICLE II
THE CREDITS

Section 2.01 **Commitments**.

(a) Subject to the terms and conditions set forth herein, each Tranche A Lender severally (and not jointly) agrees to make Tranche A Loans in Dollars to the Borrower during the Availability Period in an aggregate principal amount that will not result in such Tranche A Lender's Revolving Credit Exposure exceeding such Lender's Tranche A Commitment or the total Revolving Credit Exposures exceeding the Loan Limit. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, repay and reborrow the Tranche A Loans.

(b) Subject to the terms and conditions set forth herein, each Tranche B Lender severally (and not jointly) agrees to make the Tranche B Loan in Dollars to the Borrower, on the Effective Date, in a principal amount equal to such Lender's Tranche B Commitment pursuant to and in accordance with Section 2.01(c) below. Amounts prepaid or repaid in respect of Tranche B Loans may not be reborrowed.

(c) Subject to the terms and conditions set forth herein and to give effect to the conversion of the obligations owing to the lenders under the Pre-Petition Credit Agreement, each Lender severally agrees to make and shall be automatically deemed to have made, on the Effective Date, (x) in the case of the Tranche A Lenders, a Tranche A Loan in dollars and (y) in the case of the Tranche B Lenders, a Tranche B Loan in dollars, in each case, equal to the outstanding principal amount of the obligations owing such Lender under the Pre-Petition Credit Agreement on the Effective Date, and such outstanding principal amount of the obligations owing to Lenders under the Pre-Petition Credit Agreement shall be automatically deemed repaid under the Pre-Petition Credit Agreement on the Effective Date by the deemed making of the Loans. The principal amount of the Loans of each Lender as of the Effective Date (and immediately after giving effect to the deemed making of Loans pursuant to this Section 2.01(c)) is set forth in Annex I. The Loans deemed made pursuant to this Section 2.01(c) shall be made without any actual funding. After giving effect to this Section 2.01(c) the aggregate outstanding principal amount of Tranche A Loans shall be $50,000,000.00 and the aggregate outstanding principal amount of Tranche B Loans shall be $220,541,666.67.

Section 2.02 **Loans and Borrowings**.

(a) Borrowings; Several Obligations. Each Loan shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class and as provided in Section 2.01. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; *provided* that the Commitments are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Types of Loans. Subject to Section 3.03, each Tranche A Borrowing and each Tranche B Borrowing shall be comprised entirely of ABR Loans or LIBOR Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any LIBOR Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; *provided* that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) Minimum Amounts; Limitation on Number of Borrowings. At the commencement of each Interest Period for any Borrowing of LIBOR Loans, such Borrowing shall be in an aggregate amount that is an integral multiple of $1,000,000 and not less than $1,000,000. At the time that each Borrowing of ABR Loans is made, such Borrowing shall be in an aggregate amount that is an integral multiple of $1,000,000 and not less than $1,000,000; *provided* that, notwithstanding the foregoing, a Borrowing of LIBOR Loans in respect of the Tranche B Loans or any Borrowing of ABR Loans may be in an aggregate amount that is equal to the entire unused balance of the Loan Limit or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.08(e). Borrowings of more than one Type or Class may be outstanding at the same time, *provided* that there shall not at any time be more than a total of fourteen (14) Borrowings of LIBOR Loans outstanding. Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Tranche A Termination Date or the Tranche B Maturity Date, as applicable.

(d) Notes. Upon request of a Lender, the Tranche A Loans made by such Lender shall be evidenced by a single promissory note of the Borrower in substantially the form of Exhibit A-1 and the Tranche B Loans made by such Lender shall be evidenced by a single promissory note of the Borrower in substantially the form of Exhibit A-2, and (i) in the case of any Lender party hereto as of the date of this Agreement, such Note shall be dated as of the date of this Agreement, (ii) in the case of any Lender that becomes a party hereto pursuant to an Assignment and Assumption, such Note shall be dated as of the effective date of the Assignment and Assumption, or (iii) in the case of any Lender that becomes a party hereto in connection with an increase in the Total Tranche A Commitment pursuant to Section 2.06(c), as of the effective date of such increase, in each case, payable to such Lender in a principal amount equal to its Commitment as in effect on such date, and otherwise duly completed. In the event that any Lender's Commitment increases or decreases for any reason (whether pursuant to Section 2.06, Section 12.04(b), or otherwise), the Borrower shall, upon request of such Lender, deliver or cause to be delivered on the effective date of such increase or decrease, a new Note payable to such Lender in a principal amount equal to its Commitment after giving effect to such increase or decrease, and otherwise duly completed, against return to the Borrower of the Note so replaced. The date, amount, Class, Type, interest rate and, if applicable, Interest Period of each Loan made by each Lender, and all payments made on account of the principal thereof, shall be recorded by such Lender on its books for its Note, and, prior to any transfer, may be endorsed by such Lender on a schedule attached to such Note or any continuation thereof or on any separate record maintained by such Lender. Failure to make any such notation or to attach a schedule shall not affect any Lender's or the Borrower's rights or obligations in respect of such Loans or affect the validity of such transfer by any Lender of its Note.

Section 2.03 **Requests for Borrowings**. To request a Borrowing, the Borrower shall notify the Administrative Agent of such request in writing in the case of a Borrowing of LIBOR Loans, not later than 1:00 p.m., New York City time, three (3) Business Days before the date of the proposed Borrowing (or before 10:00 a.m., New York City time, one (1) Business Day prior to the proposed borrowing in the case of a Borrowing of LIBOR Loans on the Effective Date or such shorter period of time as the Administrative Agent may agree) or, in the case of a Borrowing of ABR Loans, not later than 11:00 a.m., New York City time, on the Business Day of the proposed Borrowing; *provided* that no such notice shall be required for any deemed request of a Borrowing of ABR Loans to finance the reimbursement of an LC Disbursement as provided in Section 2.08(e). Each such written Borrowing Request shall be irrevocable and shall be in substantially the form of Exhibit B and signed by the Borrower. Each such written Borrowing Request shall specify the following information in compliance with Section 2.02:

(a) the Class of Borrowing;

(b) the aggregate amount of the requested Borrowing;

(c) the date of such Borrowing, which shall be a Business Day;

(d) whether such Borrowing is to be Borrowing of ABR Loans or a Borrowing of LIBOR Loans;

(e) in the case of a Borrowing of LIBOR Loans, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and

(f) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.05.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be a Borrowing of ABR Loans. If no Interest Period is specified with respect to any requested Borrowing of LIBOR Loans, then the Borrower shall be deemed to have selected an Interest Period of one (1) month's duration. Each Borrowing Request shall constitute a representation by the Borrower that the amount of the requested Borrowing shall not cause the total Revolving Credit Exposures to exceed the Loan Limit.

Promptly following receipt of a Borrowing Request in accordance with this Section 2.03, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

Section 2.04 **Interest Elections**.

(a) Conversion and Continuance. Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Borrowing of LIBOR Loans, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Borrowing of LIBOR Loans, may elect Interest Periods therefor, all as provided in this Section 2.04. The Borrower may elect different options with respect to different

portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) Interest Election Requests. To make an election pursuant to this Section 2.04, the Borrower shall notify the Administrative Agent of such election in writing by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such written Interest Election Request shall be irrevocable and shall be in substantially the form of Exhibit C and signed by the Borrower.

(c) Information in Interest Election Requests. Each written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to Section 2.04(c)(iii) and (iv) shall be specified for each resulting Borrowing);

(ii) the applicable Class of the resulting Borrowing;

(iii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iv) whether the resulting Borrowing is to be a Borrowing of ABR Loans or a Borrowing of LIBOR Loans; and

(v) if the resulting Borrowing is a Borrowing of LIBOR Loans, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

(vi) If any such Interest Election Request requests a Borrowing of LIBOR Loans but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one (1) month's duration.

(d) Notice to Lenders by the Administrative Agent. Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) Effect of Failure to Deliver Timely Interest Election Request and Events of Default on Interest Election. If the Borrower fails to deliver a timely Interest Election Request with respect to a Borrowing of LIBOR Loans prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to a Borrowing of ABR Loans. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing, no outstanding Borrowing may be converted to or continued as a Borrowing of LIBOR Loans (and any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Borrowing of LIBOR Loans shall be ineffective) without Majority Lender consent and unless

repaid, each Borrowing of LIBOR Loans shall be converted to a Borrowing of ABR Loans at the end of the Interest Period applicable thereto.

Section 2.05 **Funding of Borrowings**.

(a) Funding by Lenders. Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 1:00 p.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to a Deposit Account of the Borrower that is subject to an Account Control Agreement and designated by the Borrower in the applicable Borrowing Request; *provided* that ABR Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.08(e) shall be remitted by the Administrative Agent to the applicable Issuing Bank. Nothing herein shall be deemed to obligate any Lender to obtain the funds for its Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for its Loan in any particular place or manner.

(b) Presumption of Funding by the Lenders. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.05(a) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at in the case of such Lender, the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or, in the case of the Borrower, the interest rate applicable to ABR Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

Section 2.06 **Increase, Reduction and Termination of Total Tranche A Commitment**.

(a) Scheduled Termination of Commitments. Unless previously terminated, (i) all the Tranche A Commitments shall terminate on the Tranche A Termination Date and (ii) the Tranche B Commitments shall terminate at 5:00 p.m., New York time, on the Effective Date. If at any time the Tranche A Commitment or the Borrowing Base is reduced to zero, then the Tranche A Commitments shall terminate on the effective date of such reduction.

(b) Optional Termination and Reduction of Total Tranche A Commitment.

(i) The Borrower may at any time terminate, or from time to time reduce, the Tranche A Commitment; *provided* that (A) each reduction of the Tranche A Commitment shall be in an amount that is an integral multiple of $1,000,000 and not less than $2,000,000, (B) the Borrower shall not terminate or reduce the Tranche A Commitment if, after giving effect to any concurrent prepayment of the Tranche A Loans in accordance with Section 3.04(c)(i), the total Revolving Credit Exposures would exceed the Tranche A Commitments, and (C) upon any reduction of the Total Tranche A Commitment, the Tranche A Commitments shall be automatically reduced (ratably among the Tranche A Lenders in accordance with each Tranche A Lender's Applicable Percentage) so that they equal the Total Tranche A Commitments as so reduced.

(ii) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Total Tranche A Commitment under Section 2.06(b)(i) at least three (3) Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section 2.06(b)(ii) shall be irrevocable; *provided*, *however*, that such notice of commitment reduction may state that such termination or reduction is conditioned upon the effectiveness of other credit facilities or equity issuances, the proceeds of which shall be used to repay the Obligations, in which case such notice may be revoked by the Borrower (by written notice provided to the Administrative Agent on or prior to the specified effective date thereof) if such condition is not satisfied. Any termination or reduction of the Total Tranche A Commitment shall be permanent and may not be reinstated, except pursuant to Section 2.06(c). Each reduction of the Total Tranche A Commitment shall be made ratably among the Lenders in accordance with each Lender's Applicable Percentage.

(c) Increases of Total Tranche A Commitment.

(i) Subject to the conditions set forth in Section 2.06(c)(ii), the Borrower may increase the Total Tranche A Commitment then in effect by (A) increasing the Tranche A Commitment of a Lender or (B) subject to Section 2.06(c)(ii)(H), causing a Person that is reasonably acceptable to the Administrative Agent and each Issuing Bank that at such time is not a Lender to become a Lender (any such Person that is not at such time a Lender and becomes a Lender, an "Additional Lender"), or (C) a combination of the methods described in clauses (A) and (B).

(ii) Any increase in the Total Tranche A Commitment shall be subject to the following additional conditions:

(A) such increase shall not be less than $5,000,000 unless the Administrative Agent otherwise consents;

(B) such increase shall not cause the Total Tranche A Commitment to exceed the lesser of (x) the then-effective Available Borrowing Base and (y) the Facility Amount.

(C) no Default shall have occurred and be continuing on the effective date of such increase or would result therefrom;

(D) no Lender's Tranche A Commitment may be increased without the consent of such Lender;

(E) the representations and warranties of the Borrower and the Guarantors set forth in this Agreement and in the other Loan Documents shall be true and correct in all material respects on and as of the date of such increase, except (x) to the extent any such representations and warranties are expressly limited to an earlier date, in which case, on and as of the date of such increase, such representations and warranties shall be true and correct in all material respects as of such specified earlier date, and (y) to the extent that any such representation and warranty is expressly qualified by materiality or by reference to Material Adverse Effect, such representation and warranty (as so qualified) shall continue to be true and correct in all respects;

(F) the maturity date of the Tranche A Commitments subject to such increase shall be the same as the Tranche A Termination Date;

(G) the Tranche A Commitments subject to such increase shall be on the exact same terms and pursuant to the exact same documentation applicable to this Agreement (other than with respect to any arrangement, structuring, upfront or other fees or discounts payable in connection with such increase);

(H) the Borrower may seek Tranche A Commitments from either (1) existing Lenders or (2) with the consent of the Administrative Agent and each Issuing Bank (in each case, such consent not to be unreasonably withheld or delayed), from Additional Lenders;

(I) no Borrowing Base Deficiency shall exist after giving effect to the increase (*provided* that, for the avoidance of doubt, the Borrower may elect to redetermine the Borrowing Base in accordance with Section 2.07(b)(ii) for purposes of satisfying the condition set forth in this Section 2.06(c)(ii)(I));

(J) if the Borrower elects to increase the Total Tranche A Commitment by increasing the Tranche A Commitment of a Lender, the Borrower and such Lender shall execute and deliver to the Administrative Agent a certificate substantially in the form of Exhibit H (a "Commitment Increase Certificate");

(K) if the Borrower elects to increase the Total Tranche A Commitment by causing an Additional Lender to become a party to this Agreement, then the Borrower and such Additional Lender shall execute and deliver to the Administrative Agent a certificate substantially in the form of Exhibit I (an "Additional Lender Certificate"), together with an Administrative Questionnaire and a processing and recordation fee of $3,500 (*provided* that the Administrative Agent may, in its discretion, elect to waive such processing and recordation fee in connection with any such increase), and the Borrower shall (1) if requested by the Additional Lender, deliver a Note payable to such Additional Lender in a principal amount equal to its Tranche A Commitment, and otherwise duly completed and (2) pay any applicable fees as may have been agreed to between the Borrower and the Additional Lender; and

(L) the Borrower shall deliver or cause to be delivered any customary legal opinions or other documents (including, without limitation, a resolution duly adopted by the Board of Directors (or equivalent body) of each Credit Party authorizing such increase in the Total Tranche A Commitment), in each case, to the extent reasonably requested by the Administrative Agent.

(iii) Subject to acceptance and recording thereof pursuant to Section 2.06(c)(iv), from and after the effective date specified in the Commitment Increase Certificate or the Additional Lender Certificate (or if any Borrowings of LIBOR Loans are outstanding, then the last day of the Interest Period in respect of such Borrowings of LIBOR Loans, unless the Borrower has paid any compensation required by Section 5.02): (A) the amount of the Total Tranche A Commitment shall be automatically increased as set forth therein, and (B) in the case of an Additional Lender Certificate, any Additional Lender party thereto shall be a party to this Agreement and have the rights and obligations of a Lender under this Agreement and the other Loan Documents. In addition, the Lender or the Additional Lender, as applicable, shall purchase a *pro rata* portion of the outstanding Tranche A Loans (and participation interests in Letters of Credit) of each of the other Tranche A Lenders (and such Tranche A Lenders hereby agree to sell and take all such further action to effectuate such sale) such that each Lender (including any Additional Lender, if applicable) shall hold its Applicable Percentage of the outstanding Tranche A Loans (and participation interests) after giving effect to the increase in the Total Tranche A Commitment (and the resulting modifications of each Lender's Tranche A Commitment pursuant to Section 2.06(c)(iv) or Section 2.06(c)(v)).

(iv) Upon its receipt of a duly completed Commitment Increase Certificate or an Additional Lender Certificate, executed by the Borrower and the Lender or by the Borrower and the Additional Lender party thereto, as applicable, the Administrative Questionnaire referred to in Section 2.06(c)(ii) and the break-funding payments from the Borrower, if any, required by Section 5.02, if applicable, the Administrative Agent shall accept such Commitment Increase Certificate or Additional Lender Certificate and record the information contained therein in the Register required to be maintained by the Administrative Agent pursuant to Section 12.04(b)(iv). No increase in the Total Tranche A Commitment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this Section 2.06(c)(iv).

(v) Upon any increase in the Total Tranche A Commitment pursuant to this Section 2.06(c), (A) each Tranche A Lender's Applicable Percentage shall be automatically deemed amended to the extent necessary so that each such Tranche A Lender's Applicable Percentage equals the percentage of the Total Tranche A Commitment represented by such Lender's Tranche A Commitment, in each case after giving effect to such increase, and (B) Annex I to this Agreement shall be deemed amended to reflect the Tranche A Commitment of each Lender (including any Additional Lender) as thereby increased, any changes in the Lenders' Tranche A Commitments pursuant to the foregoing clause (A), and any resulting changes in the Tranche A Lenders' Applicable Percentages.

(vi) Contemporaneously with any increase in the Borrowing Base pursuant to this Agreement, if (A) the Borrower elects to increase the Total Tranche A Commitment and (B) each Tranche A Lender has consented to such increase in its Tranche A

Commitment, then the Total Tranche A Commitment shall be increased (ratably among the Tranche A Lenders in accordance with each Tranche A Lender's Applicable Percentage) by the amount requested by the Borrower (subject to the limitations set forth in Section 2.06(c)(ii)(A)) without the requirement that any Tranche A Lender deliver a Commitment Increase Certificate or that the Borrower pay any amounts under Section 5.02, and Annex I shall be deemed amended to reflect such amendments to each Tranche A Lender's Tranche A Commitment and the Total Tranche A Commitment. The Administrative Agent shall record the information regarding such increases in the Register required to be maintained by the Administrative Agent pursuant to Section 12.04(b)(iv).

(d) Automatic Reductions of Total Tranche A Commitment. Upon any redetermination or other adjustment in the Available Borrowing Base pursuant to this Agreement that would otherwise result in the Available Borrowing Base becoming less than the Total Tranche A Commitment, the Total Tranche A Commitment shall be automatically reduced (ratably among the Tranche A Lenders in accordance with each Tranche A Lender's Applicable Percentage) so that the Total Tranche A Commitment equals the Available Borrowing Base (and Annex I shall be deemed amended to reflect such amendments to each Lender's Tranche A Commitment and the Total Tranche A Commitment). Any such reduction of the Total Tranche A Commitment shall be permanent and may not be reinstated, except pursuant to Section 2.06(c).

Section 2.07 **Borrowing Base**.

(a) Initial Borrowing Base. For the period from and including the Effective Date to but excluding the Initial Redetermination Date, the amount of the Borrowing Base shall be $2,500,000,000. Notwithstanding the foregoing, the Borrowing Base may be subject to further adjustments from time to time pursuant to the Borrowing Base Adjustment Provisions and any such adjustment to the Borrowing Base shall result in an automatic adjustment of the Available Borrowing Base.

(b) Scheduled and Interim Redeterminations.

(i) The Borrowing Base shall be redetermined semi-annually in accordance with this Section 2.07 (each such redetermination, a "Scheduled Redetermination") and, subject to Section 2.07(d), such redetermined Borrowing Base shall become effective and applicable to the Borrower, the Administrative Agent, the Issuing Bank(s) and the Lenders (1) during the 2021 calendar year, on or about the Initial Redetermination Date and (2) thereafter, on or about May 1st and November 1st of each calendar year.

(ii) The Borrower may elect to cause, by notifying the Administrative Agent thereof, at any time prior to the Initial Redetermination Date, the Borrowing Base to be redetermined. After the Initial Redetermination Date, the Borrower may elect to cause, by notifying the Administrative Agent thereof, and the Administrative Agent shall cause, at the election and direction of the Required Lenders, by notifying the Borrower thereof, no more than one (1) time between Scheduled Redeterminations, the Borrowing Base to be redetermined between Scheduled Redeterminations. Each redetermination of the Borrowing Base pursuant to the two (2) immediately preceding sentences is referred to herein as an "Interim Redetermination" and shall be effectuated in accordance with this Section 2.07. Notwithstanding the foregoing, the

Required Lenders may not cause an Interim Redetermination to occur prior to the Initial Redetermination Date.

(c) Scheduled and Interim Redetermination Procedure.

(i) Each Scheduled Redetermination and each Interim Redetermination shall be effectuated as follows: Upon receipt by the Administrative Agent of the Reserve Report and the Swap Schedule and the certificate required to be delivered by the Borrower to the Administrative Agent, in the case of a Scheduled Redetermination, pursuant to Section 8.12(a) and Section 8.12(d), and, in the case of an Interim Redetermination, pursuant to Section 8.12(c) and Section 8.12(d), and such other reports, data and supplemental information, including the information provided pursuant to Section 8.12(c), as may, from time to time, be reasonably requested by the Required Lenders (the Reserve Report, the Swap Schedule, such certificate and such other reports, data and supplemental information being the "Engineering Reports"), the Administrative Agent shall evaluate the information contained in the Engineering Reports and shall, in good faith, propose a new Borrowing Base (the "Proposed Borrowing Base") based upon such information and such other information (including, without limitation, the status of title information with respect to the Oil and Gas Properties as described in the Engineering Reports and the existence of any other Indebtedness) as the Administrative Agent deems appropriate in its sole discretion and consistent with its usual and customary oil and gas lending criteria as it exists at the particular time.

(ii) The Administrative Agent shall notify the Borrower and the Lenders of the Proposed Borrowing Base (the "Proposed Borrowing Base Notice"):

(A) in the case of a Scheduled Redetermination (1) if the Administrative Agent shall have received the Engineering Reports required to be delivered by the Borrower pursuant to Section 8.12(a) and Section 8.12(d) in a timely and complete manner, then, for the 2021 fiscal year, on September 15 of such year (or such date promptly thereafter as reasonably practicable), and thereafter, each April 15 and October 15 (or such date promptly thereafter as reasonably practicable) of each year following the date of delivery or (2) if the Administrative Agent shall not have received the Engineering Reports required to be delivered by the Borrower pursuant to Section 8.12(a) and Section 8.12(d) in a timely and complete manner, then promptly after the Administrative Agent has received complete Engineering Reports from the Borrower and has had a reasonable opportunity to determine the Proposed Borrowing Base in accordance with Section 2.07(c)(i); and

(B) in the case of an Interim Redetermination, promptly, and in any event, within fifteen (15) days after the Administrative Agent has received the required Engineering Reports.

(iii) (A) Any Proposed Borrowing Base that would increase the Borrowing Base then in effect must be approved by all of the Tranche A Lenders (or, if all Tranche A Commitments have been terminated and all Obligations with respect to Tranche A Loans have been repaid in full, the Tranche B Lenders) and (B) any Proposed Borrowing Base that would decrease or maintain the Borrowing Base then in effect must be approved by the Required Lenders, in each case, as determined in each such Lender's sole discretion and in good faith, consistent with

each such Lender's usual and customary oil and gas lending criteria as they exist at the particular time as provided in this Section 2.07(c)(iii). Such decisions will be made by each Lender based upon the Engineering Reports and such other information (including the status of title information with respect to the Oil and Gas Properties as described in the Engineering Reports and the existence of any other Indebtedness) as such Lender deems appropriate in its sole credit discretion and consistent with each Lender's normal and customary standards and practices for determining the value of Oil and Gas Properties based upon its usual and customary criteria for reserve based oil and gas lending criteria as it exists at the particular time. Upon receipt of the Proposed Borrowing Base Notice, each Tranche A Lender shall have fifteen (15) days to agree with the Proposed Borrowing Base or disagree with the Proposed Borrowing Base by proposing an alternate Borrowing Base. If, at the end of such 15-day period, all of the Tranche A Lenders (or, if all Tranche A Commitments have been terminated and all Obligations with respect to Tranche A Loans have been repaid in full, the Tranche B Lenders) (in the case of a Proposed Borrowing Base that would increase the Borrowing Base then in effect) or the Required Lenders (in the case of a Proposed Borrowing Base that would decrease or maintain the Borrowing Base then in effect) have approved, as aforesaid, then the Proposed Borrowing Base shall become the new Borrowing Base, effective on the date specified in Section 2.07(d). If, however, at the end of such 15-day period, all of the Tranche A Lenders (or, if all Tranche A Commitments have been terminated and all Obligations with respect to Tranche A Loans have been repaid in full, the Tranche B Lenders) or the Required Lenders, as applicable, have not approved, as aforesaid, a new Borrowing Base, then the Administrative Agent shall promptly thereafter poll the Tranche A Lenders (or, if all Tranche A Commitments have been terminated and all Obligations with respect to Tranche A Loans have been repaid in full, the Tranche B Lenders) to ascertain the highest Borrowing Base then acceptable to each Tranche A Lender (or, if all Tranche A Commitments have been terminated and all Obligations with respect to Tranche A Loans have been repaid in full, the Tranche B Lenders) (in the case of any increase to the Borrowing Base) or a number of Lenders sufficient to constitute the Required Lenders (in any other case) and such amount shall become the new Borrowing Base, effective on the date specified in Section 2.07(d) (provided, that, if the Administrative Agent shall have polled the applicable Lenders and ascertained that the highest Borrowing Base then acceptable to all of the Tranche A Lenders (or, if all Tranche A Commitments have been terminated and all Obligations with respect to Tranche A Loans have been repaid in full, the Tranche B Lenders) increases the Borrowing Base then in effect, such amount shall become the new Borrowing Base, effective on the date specified in Section 2.07(d)).

(d) Effectiveness of a Redetermined Borrowing Base. After a redetermined Borrowing Base is approved by all of the Tranche A Lenders (or, if all Tranche A Commitments have been terminated and all Obligations with respect to Tranche A Loans have been repaid in full, the Tranche B Lenders) or the Required Lenders, as applicable, pursuant to Section 2.07(c)(iii), the Administrative Agent shall notify the Borrower and the Lenders of the amount of the redetermined Borrowing Base (the "New Borrowing Base Notice"), and such amount shall become the new Borrowing Base, effective and applicable to the Borrower, the Administrative Agent, the Issuing Bank and the Lenders:

(i) in the case of a Scheduled Redetermination, (A) if the Administrative Agent shall have received the Engineering Reports required to be delivered by the Borrower pursuant to Section 8.12(a) and Section 8.12(d) in a timely and complete manner, then, (x) on or about the Initial Redetermination Date, and thereafter, (y) on or about May 1st and

November 1st (or, in each case, such date promptly after the delivery of the New Borrowing Base Notice as identified in such New Borrowing Base Notice), or (B) if the Administrative Agent shall not have received the Engineering Reports required to be delivered by the Borrower pursuant to Section 8.12(a) and Section 8.12(d) in a timely and complete manner, then on the Business Day next succeeding delivery of such New Borrowing Base Notice; and

(ii) in the case of an Interim Redetermination on the Business Day next succeeding delivery of such New Borrowing Base Notice.

Such amount shall then become the Borrowing Base until the next Redetermination Date or the next adjustment to the Borrowing Base under the Borrowing Base Adjustment Provisions, whichever occurs first. Notwithstanding the foregoing, no Scheduled Redetermination or Interim Redetermination shall become effective until the New Borrowing Base Notice related thereto is received by the Borrower.

(e) Administrative Agent Data. The Administrative Agent hereby agrees to provide an updated Bank Price Deck to the Borrower (i) promptly, and in any event within one (1) Business Day, after the Administrative Agent's request for an Interim Redetermination, (ii) promptly, and in any event within one (1) Business Day, upon any request of the Borrower, and (iii) reasonably promptly after the Administrative Agent becoming aware of any change to the Bank Price Deck from the version most recently delivered to the Borrower. In addition, the Administrative Agent and the Lenders agree, upon request, to meet with the Borrower to discuss their evaluation of the reservoir engineering of the Oil and Gas Properties included in any Reserve Report and their respective methodologies for valuing such properties and the other factors considered in calculating the Borrowing Base.

(f) Reduction of Borrowing Base Upon Issuance of Permitted Specified Debt. Upon the issuance of any Permitted Additional Debt or Other Secured Debt (other than any Permitted Refinancing Indebtedness in respect thereof) (the "Specified Additional Debt") after the Effective Date by the Borrower or any Guarantor, the Borrowing Base then in effect shall be automatically reduced by an amount equal to (i) 0.25 *multiplied by* (ii) the stated principal amount of such Indebtedness (without regard to any initial issue discount), and, in each case, the Borrowing Base as so reduced shall become the new Borrowing Base immediately upon the date of such issuance, effective and applicable to the Borrower, the Administrative Agent, the Issuing Bank, and the Lenders on such date until the next redetermination or adjustment of the Borrowing Base pursuant to this Agreement.

(g) Reduction of Borrowing Base in Connection with Asset Sales and Liquidation of Swap Agreements. In the event of (i) any Disposition of any Borrowing Base Properties by the Borrower or any Credit Party to any Person other than the Borrower or another Credit Party or (ii) any Liquidation of any Swap Agreements by the Borrower or any Credit Party, if, upon (and after giving effect to) any such Disposition or Liquidation, the sum of (A) the PV-10 of all Borrowing Base Properties Disposed by any Credit Party to any Person other than another Credit Party *plus* (B) the Swap PV of all Swap Agreements Liquidated, in each case, since the later of (x) the last Redetermination Date and (y) the last adjustment of the Borrowing Base pursuant to this clause (g), exceeds five percent (5%) of the then-effective Borrowing Base (as reasonably determined by the Administrative Agent after (1) giving effect to any acquisitions of and other

Investments in Oil and Gas Properties by the Credit Parties during such period with respect to which the Borrower has delivered a Reserve Report that is reasonably acceptable to the Administrative Agent and (2) taking into account any other Swap Agreements permitted hereunder entered into during such period that are in effect at the time of such determination), individually or in the aggregate, then the Borrowing Base will automatically be reduced by an amount not to exceed the Borrowing Base Value of such Borrowing Base Properties or such Liquidated Swap Agreements and, upon any such reduction, the Administrative Agent shall promptly inform the Borrower of the amount of the adjusted Borrowing Base. For the purposes of this Section 2.07(g), (I) the Disposition of Stock in any Credit Party owning such Borrowing Base Properties and/or commodity Swap Agreements shall be deemed the Disposition of the Borrowing Base Properties and the Liquidation of commodity Swap Agreements owned by such Credit Party and (II) a Disposition of Borrowing Base Properties shall be deemed to include the designation of a Restricted Subsidiary that is a Credit Party as an Unrestricted Subsidiary and the Disposition of Borrowing Base Properties, or Stock in any Credit Party, to an Unrestricted Subsidiary.

(h) Reduction of Borrowing Base Related to Title Defects. If the Required Lenders have adjusted the Borrowing Base in accordance with Section 8.13(c), so that, after giving effect to such reduction, the Borrower shall have provided reasonably satisfactory title information in respect of the required percentage of the value of the Borrowing Base Properties pursuant to Section 8.13, the Administrative Agent shall promptly notify the Borrower in writing (which shall constitute a New Borrowing Base Notice for all purposes) and, upon receipt of such notice, the new Borrowing Base will simultaneously become effective.

Section 2.08 **Letters of Credit**.

(a) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of dollar denominated Letters of Credit for its own account or for the account of any of its Subsidiaries that is a Restricted Subsidiary, in a form reasonably acceptable to the Administrative Agent and the applicable Issuing Bank, at any time and from time to time during the Availability Period; *provided* that the Borrower may not request the issuance, amendment, renewal or extension of Letters of Credit hereunder if a Borrowing Base Deficiency exists at such time or would exist as a result thereof. The aggregate amount of the outstanding Letters of Credit issued by any Issuing Bank shall not exceed such Issuing Bank's LC Issuance Limit and the aggregate amount of all outstanding Letters of Credit issued by all Issuing Banks shall not exceed the LC Commitment. Each Letter of Credit shall be in a minimum face amount of Twenty-Five Thousand Dollars ($25,000) (or such lesser amount as may be agreed to by the applicable Issuing Bank). In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, the Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. On the Effective Date, the Existing Letter of Credit shall be deemed to have been issued pursuant to, and shall constitute a Letter of Credit for all purposes under, this Agreement by the Issuing Bank, without payment of any fees otherwise due upon the issuance of a Letter of Credit, and the Issuing Bank shall be deemed, without further action by any party hereto, to have sold to each Lender, and each Lender shall be deemed, without further action by any party hereto, to have purchased from such Issuing Bank, a participation, to the extent of such Lender's Applicable Percentage, in the Existing Letter of Credit pursuant to Section 2.08(d).

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver, electronically transmit or facsimile (or transmit by other means reasonable acceptable to the applicable Issuing Bank) to the applicable Issuing Bank and the Administrative Agent (not less than three (3) (or such lesser number as may be agreed upon by the Administrative Agent and the Issuing Bank) Business Days in advance of the requested date of issuance, amendment, renewal or extension) a notice:

(i) requesting the issuance of a Letter of Credit or identifying the Letter of Credit to be amended, renewed or extended (which notice may be on such Issuing Bank's customary application for the issuance of Letters of Credit);

(ii) specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day);

(iii) specifying the date on which such Letter of Credit is to expire (which shall comply with Section 2.08(c));

(iv) specifying the amount of such Letter of Credit;

(v) specifying the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit; and

(vi) specifying the amount of the then-effective Available Borrowing Base and the then-effective Total Tranche A Commitment and whether a Borrowing Base Deficiency exists at such time and the current total Revolving Credit Exposures (without regard to the requested Letter of Credit or the requested amendment, renewal or extension of an outstanding Letter of Credit) and the *pro forma* total Revolving Credit Exposures (giving effect to the requested Letter of Credit or the requested amendment, renewal or extension of an outstanding Letter of Credit).

In addition, if requested by the applicable Issuing Bank in connection with any Letter of Credit issuance, the Borrower shall have entered into a Letter of Credit Agreement. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any Letter of Credit Agreement, the terms and conditions of this Agreement shall control.

Each notice shall constitute a representation and warranty by the Borrower that after giving effect to the requested issuance, amendment, renewal or extension, as applicable, (A) the LC Exposure shall not exceed the LC Commitment, (B) the aggregate amount of outstanding Letters of Credit issued by the applicable Issuing Bank does not exceed the LC Issuance Limit of such Issuing Bank, (C) the total Revolving Credit Exposures do not exceed the Loan Limit and (D) the Aggregate Credit Exposures do not exceed the Total Tranche A Commitments.

Additionally, an Issuing Bank shall not be under any obligation to issue any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any law applicable to such Issuing Bank shall prohibit, or require that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense that was not applicable on the Effective Date and that such Issuing Bank in good faith deems material to it; or

(ii) the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of credit generally,

so long as, in the case of the immediately preceding clauses (i) and (ii), such Issuing Bank, or the Administrative Agent on behalf of such Issuing Bank, after receipt of the applicable request for issuance of a Letter of Credit, has promptly (but, in any case, within two (2) Business Day) notified the Borrower of the occurrence of any such event or circumstance, describing in reasonable detail such event or circumstance and stating in good faith that as a result of such events or circumstances, such Issuing Bank refuses to issue the requested Letter of Credit pursuant to this Section 2.08(b).

(c) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date one (1) year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one (1) year after such renewal or extension), and (ii) the date that is seven (7) Business Days prior to the Tranche A Termination Date. Each Letter of Credit with a one (1) year term may provide for the renewal thereof for additional one (1) year periods; *provided* that no such period shall extend beyond the date described in clause (ii) above unless cash collateralized or backstopped pursuant to arrangements reasonably satisfactory to the applicable Issuing Bank.

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the applicable Issuing Bank or the Lenders, the applicable Issuing Bank hereby grants to each Tranche A Lender, and each Tranche A Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Tranche A Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of such Issuing Bank, such Tranche A Lender's Applicable Percentage of each LC Disbursement made by such Issuing Bank and not reimbursed by the Borrower on the date due as provided in Section 2.08(e), or of any reimbursement payment required to be refunded to the Borrower for any reason. Each Tranche A Lender acknowledges and agrees that its obligation to acquire participations pursuant to this Section 2.08(d) in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default, the existence of a Borrowing Base Deficiency or the

reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement. If any Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 12:00 noon, New York City time, on the next Business Day immediately following the date that such LC Disbursement is made, if the Borrower shall have received notice of such LC Disbursement prior to 10:00 a.m., New York City time, on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 3:00 p.m., New York City time, on (i) the next Business Day after the Borrower receives such notice, if such notice is received prior to 10:00 a.m., New York City time, on the day of receipt, or (ii) the next Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; *provided* that, unless the Borrower has notified the Administrative Agent that it intends to reimburse all or part of such LC Disbursement without using Tranche A Loan proceeds or has submitted a Borrowing Request with respect thereto, the Borrower shall be deemed (without regard to the satisfaction of the conditions specified in Section 6.02) to have requested, and the Borrower does hereby request under such circumstances, that such payment be financed with a Borrowing of ABR Tranche A Loans in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting Borrowing of ABR Tranche A Loans. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Tranche A Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Tranche A Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Tranche A Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrower, in the same manner as provided in Section 2.05 with respect to Tranche A Loans made by such Tranche A Lender (and Section 2.05 shall apply, *mutatis mutandis*, to the payment obligations of the Tranche A Lenders), and the Administrative Agent shall promptly pay to the applicable Issuing Bank the amounts so received by it from the Tranche A Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this Section 2.08(e), the Administrative Agent shall distribute such payment to the applicable Issuing Bank or, to the extent that Tranche A Lenders have made payments pursuant to this Section 2.08(e) to reimburse such Issuing Bank, then to such Tranche A Lenders and such Issuing Bank as their interests may appear. Any payment made by a Tranche A Lender pursuant to this Section 2.08(e) to reimburse the applicable Issuing Bank for any LC Disbursement (other than the funding of ABR Tranche A Loans as contemplated above) shall not constitute a Tranche A Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement.

(f) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in Section 2.08(e) shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of any lack of validity or enforceability of any Letter of Credit, any Letter of Credit Agreement or this Agreement, or any term or provision therein, any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, payment by any Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit or any Letter of Credit Agreement, or any

other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.08(f), constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Administrative Agent, the Lenders nor any Issuing Bank, nor any of their Related Parties shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of any Issuing Bank; *provided* that the foregoing shall not be construed to excuse any Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by such Issuing Bank's failure to exercise due care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof or by such Issuing Bank's gross negligence or willful misconduct (as finally determined by a court of competent jurisdiction). In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the applicable Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. Each Issuing Bank shall, within the period stipulated by terms and conditions of Letter of Credit, following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. After such examination and provided drawing documents are compliant, each Issuing Bank shall promptly notify the Administrative Agent and the Borrower by telephone (confirmed by facsimile or electronic mail) of such demand for payment and whether such Issuing Bank has made or will make an LC Disbursement thereunder; *provided* that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse such Issuing Bank and the Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If any Issuing Bank shall make any LC Disbursement, then, until the Borrower shall have reimbursed such Issuing Bank for such LC Disbursement (either with its own funds or a Tranche A Borrowing under Section 2.08(e)), the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Loans. Interest accrued pursuant to this Section 2.08(h) shall be for the account of such Issuing Bank, except that interest accrued on and after the date of payment by any Tranche A Lender pursuant to Section 2.08(e) to reimburse such Issuing Bank shall be for the account of such Tranche A Lender to the extent of such payment.

(i) Replacement of Issuing Banks. Each Issuing Bank may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any

such replacement of any Issuing Bank. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 3.05(b). From and after the effective date of any such replacement, the successor Issuing Bank shall have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of any Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit. Schedules 1.02(b) and 1.02(d) shall be amended upon the written agreement of the Borrower, the Administrative Agent and any successor Issuing Bank to set forth such Issuing Bank's LC Issuance Limit, and no successor Issuing Bank shall be an "Issuing Bank" hereunder until such amendment is effective.

(j) Cash Collateralization.

(i) If the Borrower is required to Cash Collateralize the excess attributable to LC Exposure in connection with any prepayment pursuant to Section 3.04(c), or the Borrower is required to Cash Collateralize a Defaulting Lender's LC Exposure pursuant to Section 4.05(a)(iv), then the Borrower shall Cash Collateralize such LC Exposure or the excess attributable to such LC Exposure, as the case may be, as of such date. In addition, if the Tranche A Commitments are terminated or the Tranche A Loans become due and payable pursuant to Section 10.02(a) or the Tranche A Loans are not paid in full on the Tranche A Termination Date, then the Borrower shall deposit, in an account with the Collateral Agent, in the name of the Collateral Agent and for the benefit of the Lenders, an amount in cash equal to the LC Exposure.

(ii) The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Collateral Agent, for the benefit of the Issuing Banks and the Lenders, a security interest in and Lien on each account (a "Collateral Account") in which the Borrower has Cash Collateralized any obligation hereunder and all cash, checks, drafts, certificates and instruments, if any, from time to time deposited or held in such account, all deposits or wire transfers made thereto, any and all Investments purchased with funds deposited in such account, all interest, dividends, cash, instruments, financial assets and other Property from time to time received, receivable or otherwise payable in respect of, or in exchange for, any or all of the foregoing, and all proceeds, products, accessions, rents, profits, income and benefits therefrom, and any substitutions and replacements therefor (collectively, the "Cash Collateral"). The Borrower, and to the extent granted by any Defaulting Lender, such Defaulting Lender, agrees to maintain, or cause to be maintained, such security interest as an exclusive first priority and continuing perfected security interest. If at any time the Administrative Agent or the Collateral Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Collateral Agent and the Issuing Banks as herein provided (other than Permitted Liens), or that the total amount of such Cash Collateral is less than the minimum collateral amount required hereunder, the Borrower will, promptly upon demand by the Administrative Agent or the Collateral Agent, as the case may be, pay or provide to the Collateral Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(iii) The Borrower's obligation to Cash Collateralize pursuant to this Section 2.08(j) shall be absolute and unconditional, without regard to whether any beneficiary of any Letter of Credit has attempted to draw down all or a portion of such amount under the terms of a Letter of Credit, and, to the fullest extent permitted by applicable law, shall not be subject to any defense or be affected by a right of set-off, counterclaim or recoupment which the Borrower or any Restricted Subsidiary may now or hereafter have against any such beneficiary, any Issuing Bank, the Administrative Agent, the Lenders or any other Person for any reason whatsoever.

(iv) Each Collateral Account and all Cash Collateral shall secure the payment and performance of the Borrower's and the Guarantors' Obligations under this Agreement and the other Loan Documents. The Collateral Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over each Collateral Account and the Cash Collateral. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Collateral Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in each Collateral Account. Moneys in such account shall be applied by the Collateral Agent to reimburse each Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Tranche A Loans has been accelerated, be applied to satisfy other obligations of the Borrower and the Guarantors under this Agreement or the other Loan Documents. If the Borrower is required to Cash Collateralize hereunder in connection with any prepayment pursuant to Section 3.04(c), then such Cash Collateral will be returned to the Borrower within three (3) Business Days after the Borrowing Base Deficiency or amount in excess of the Loan Limit, as applicable, ceases to exist; *provided* that such Cash Collateral shall remain subject to the security interest granted pursuant to the Loan Documents. If the Borrower is required to Cash Collateralize hereunder pursuant to Section 4.05(a)(iv), then such Cash Collateral shall no longer be required to be held as Cash Collateral pursuant to this Section 2.08(j) following the elimination or reduction of the applicable LC Exposure (including by the termination of Defaulting Lender status of the applicable Lender) such that there exists excess Cash Collateral; *provided* that, subject to Section 4.05 the Person providing Cash Collateral and the Issuing Banks may agree that Cash Collateral shall be held to support future anticipated LC Exposure or other obligations, and *provided further* that to the extent that such Cash Collateral was provided by the Borrower, such Cash Collateral shall be returned to the Borrower but shall remain subject to the security interest granted pursuant to the Loan Documents. If the Borrower is required to Cash Collateralize hereunder pursuant to the final sentence of Section 2.08(j)(i), then such Cash Collateral shall be returned to the Borrower within three (3) Business Days after the LC Exposure has been reduced to zero.

(k) Letters of Credit Issued for Account of Restricted Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder supports any obligations of, or is for the account of, a Restricted Subsidiary, or states that a Restricted Subsidiary is the "account party," "applicant," "customer," "instructing party," or the like of or for such Letter of Credit, and without derogating from any rights of the applicable Issuing Bank (whether arising by contract, at law, in equity or otherwise) against such Restricted Subsidiary in respect of such Letter of Credit, the Borrower shall reimburse, indemnify and compensate the applicable Issuing Bank hereunder for such Letter of Credit (including to reimburse any and all drawings thereunder) in accordance with the terms of this Agreement as if such Letter of Credit had been issued solely for

the account of the Borrower. The Borrower hereby acknowledges that the issuance of such Letters of Credit for its Subsidiaries that are Restricted Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Restricted Subsidiaries.

ARTICLE III
PAYMENTS OF PRINCIPAL AND INTEREST; PREPAYMENTS; FEES

Section 3.01 **Repayment of Loans**. The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan on the Tranche A Termination Date or the Tranche B Maturity Date, as applicable.

Section 3.02 **Interest**.

(a) ABR Loans. The Loans comprising each Borrowing of ABR Loans shall bear interest at the ABR *plus* the Applicable Margin for Borrowings of ABR Loans, but in no event to exceed the Highest Lawful Rate.

(b) LIBOR Loans. The Loans comprising each Borrowing of LIBOR Loans shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing *plus* the Applicable Margin for Borrowings of LIBOR Loans, but in no event to exceed the Highest Lawful Rate.

(c) Post-Default Rate. Notwithstanding the foregoing, if an Event of Default specified in Section 10.01(a) or Section 10.01(b) has occurred and is continuing, then, at the direction of the Majority Lenders, the relevant overdue Loans and other overdue obligations outstanding under this Agreement shall bear interest at a rate *per annum* equal to (A) in the case of the principal or amount of interest on any Loan, two percent (2.00%) *plus* the rate otherwise applicable to such Loan as provided in Section 3.02(a) or Section 3.02(b), or (B) in the case of any fees, two percent (2.00%) *plus* the rate applicable to ABR Loans as provided in Section 3.02(a), but in no event to exceed the Highest Lawful Rate (the "Post-Default Rate").

(d) Interest Payment Dates. Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan; *provided* that interest accrued pursuant to Section 3.02(c) shall be payable on demand. In the event of any repayment or prepayment of any Loan (other than an optional prepayment of an ABR Loan prior to the Tranche A Termination Date or the Tranche B Maturity Date, as the case may be), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment, and in the event of any conversion of any LIBOR Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) Rate and Fee Bases. All per annum rates hereunder shall be computed on the basis of a year of 360 days, unless such computation would exceed the Highest Lawful Rate, in which case interest shall be computed on the basis of a year of 365 days (or 366 days in a leap year), except that interest computed by reference to the ABR at times when the ABR is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable ABR, Adjusted LIBO Rate or LIBOR shall be determined

by the Administrative Agent, and such determination shall be conclusive absent manifest error, and be binding upon the parties hereto.

Section 3.03 **Alternate Rate of Interest**.

(a) Subject to clauses (b) through (e) of this Section 3.03, if prior to the commencement of any Interest Period for a Borrowing of LIBOR Loans:

(i) the Administrative Agent reasonably determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or LIBOR, as applicable (including because the LIBOR Screen Rate is not available or published on a current basis) for such Interest Period; or

(ii) the Administrative Agent is advised by the Majority Lenders that the Adjusted LIBO Rate or LIBOR, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone, telecopy or electronic mail as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Borrowing of LIBOR Loans shall be ineffective, and if any Borrowing Request requests a Borrowing of LIBOR Loans, such Borrowing shall be made as a Borrowing of ABR Loans.

(b) Benchmark Replacement.

(i) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (a)(1) or (a)(2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (a)(3) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5^{th}) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Majority Lenders.

(ii) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior

to the Reference Time in respect of any setting of the then-current Benchmark, then the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; provided that, this clause (b)(ii) shall not be effective unless the Administrative Agent has delivered to the Lenders and the Borrower a Term SOFR Notice.

(c) Benchmark Replacement Conforming Changes. In connection with the implementation of a Benchmark Replacement, the Administrative Agent, in consultation with the Borrower, will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(d) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (e) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 3.03, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 3.03.

(e) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR or USD LIBOR) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(f) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Borrowing of LIBOR Loans of, conversion to or continuation of LIBOR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to ABR Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR.

Section 3.04 **Prepayments**.

(a) Optional Prepayments. The Borrower shall have the right at any time and from time to time to prepay as follows: (i) first, to the extent that there are any Tranche A Loans outstanding, any Tranche A Borrowing in whole or in part; and (ii) second, if there are no Tranche A Loans outstanding, any Tranche B Borrowing in whole or in part, in each case, subject to prior notice in accordance with Section 3.04(b).

(b) Notice and Terms of Optional Prepayment. The Borrower shall notify the Administrative Agent by telephone (confirmed by electronic means acceptable to Administrative Agent) of any optional prepayment hereunder (i) in the case of prepayment of a Borrowing of LIBOR Loans, not later than 1:00 p.m., New York City time, three (3) Business Days before the date of prepayment, or (ii) in the case of prepayment of a Borrowing of ABR Loans, not later than 1:00 p.m., New York City time, on the date of prepayment. Each such notice shall specify the prepayment date, the Type and Class of such Borrowing, and the principal amount of each Borrowing or portion thereof to be prepaid. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each such partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type and Class as provided in Section 2.02. Each such prepayment of a Borrowing shall be applied ratably to the same Class of Loans included in the prepaid Borrowing and shall be accompanied by accrued interest to the extent required by Section 3.02. Each such notice of prepayment may state that such prepayment is conditioned upon the effectiveness of other credit facilities or equity issuances, the proceeds of which shall be used to repay the Obligations, in which case such notice may be revoked by the Borrower (by written notice provided to the Administrative Agent in accordance with this Section 3.04(b)) if such condition is not satisfied.

(c) Mandatory Prepayments.

(i) Upon Optional Termination and Reduction of Commitments. If, after giving effect to any termination or reduction in the Total Tranche A Commitments pursuant to Section 2.06(b), the total Revolving Credit Exposures exceed the Loan Limit or the total Revolving Credit Exposures exceed the Total Tranche A Commitment, then the Borrower shall prepay the applicable Borrowings on the date of such termination or reduction in an aggregate principal amount equal to such excess, and if any excess remains after prepaying all of the Borrowings as a result of an LC Exposure, Cash Collateralize such excess as provided in Section 2.08(j).

(ii) Upon Redeterminations and Title Related Borrowing Base Adjustments. If there is a Borrowing Base Deficiency (A) on any Redetermination Date as a result of any redetermination in accordance with Section 2.07 or (B) as a result of a Borrowing Base adjustment pursuant to Section 2.07(h), then upon receipt by the Borrower of written notice from the Administrative Agent of such Redetermination Date or the occurrence of such Borrowing Base adjustment (the date of delivery of such notice, the "Deficiency Date"), the Borrower shall eliminate such Borrowing Base Deficiency in its entirety by electing (with written notice to the Administrative Agent) within ten (10) Business Days of the Deficiency Date to take one or more of the following actions (and if the Borrower fails to make an election within such ten (10) Business Day period, then Borrower shall be deemed to have selected the prepayment option specified in clause (C) below):

(A) within thirty (30) days after such Deficiency Date, prepaying the Borrowings in an aggregate principal amount equal to such Borrowing Base Deficiency and if any Borrowing Base Deficiency, and if any Borrowing Base Deficiency remains after prepaying all of the Borrowings as a result of an LC Exposure, Cash Collateralizing such excess as provided in Section 2.08(j);

(B) within thirty (30) days after such Deficiency Date, adding additional Oil and Gas Properties of the Borrower and the other Credit Parties to the Reserve Report (and, if required under Section 8.14, mortgaging additional Borrowing Base Properties in compliance with the requirements of Section 8.14, with acceptable title information to at least 85% of the PV-10 value of such Oil and Gas Properties to follow within sixty (60) days of the delivery of the Mortgages delivered pursuant to Section 8.14) that, in each case, are reasonably acceptable to the Administrative Agent and the Lenders and would result in an increase to the Borrowing Base (in an amount proposed by the Administrative Agent and approved by the Required Lenders) that is sufficient to eliminate such Borrowing Base Deficiency;

(C) make three (3) equal monthly payments that collectively prepay the Borrowings *plus* accrued interest thereon until such Borrowing Base Deficiency (as it may be further increased or reduced during such three (3) month period) is reduced to zero (and if any Borrowing Base Deficiency remains after prepaying all of the Borrowings as a result of an LC Exposure, Cash Collateralize such excess as provided in Section 2.08(j)), with the first such payment being due and payable within thirty (30) days after such Deficiency Date, and each subsequent payment being due and payable on the same day in each of the subsequent calendar months; or

(D) any combination of the foregoing;

provided that all payments required to be made pursuant to this Section 3.04(c)(ii) must be made on or prior to the Termination Date.

(iii) Upon the Issuance of Indebtedness or Certain Asset Sales or Liquidations. If any Borrowing Base Deficiency occurs as the result of any adjustment to the Borrowing Base pursuant to Section 2.07(f) or Section 2.07(g), then the Borrower shall prepay the Borrowings in an aggregate principal amount equal to such Borrowing Base Deficiency and if any Borrowing Base Deficiency remains after prepaying all of the Borrowings as a result of an LC

Exposure, Cash Collateralize such excess as provided in Section 2.08(j). The Borrower shall be obligated to make such prepayment and/or Cash Collateralize such excess within one Business Day after it receives the net cash proceeds from the transactions under Section 2.07(f) or Section 2.07(g); *provided* that all payments required to be made pursuant to this Section 3.04(c)(iii) must be made, with respect to any Tranche A Loans or any LC Exposure, on or prior to the Tranche A Termination Date and, with respect to any other Obligations, on or prior to the Termination Date.

(iv) Upon the Occurrence and Continuation of a Borrowing Base Deficiency. In addition to the foregoing mandatory prepayments set forth in this Section 3.04(c), at any time that Indebtedness (other than Other Secured Debt or any Permitted Refinancing Indebtedness) shall be incurred or issued while a Borrowing Base Deficiency exists, the Borrower shall to the extent necessary to cure such Borrowing Base Deficiency (calculated after giving effect to the Borrowing Base adjustment required pursuant to Section 2.07(f) in connection with such Indebtedness), within one (1) Business Day of the incurrence or issuance of such Indebtedness, prepay the Loans in an aggregate amount equal to the lesser of (A) one hundred percent (100%) of the net cash proceeds received in respect of such Indebtedness and (B) the aggregate principal amount equal to (1) such Borrowing Base Deficiency and (2) if any Borrowing Base Deficiency remains after prepaying all of the Borrowings as a result of an LC Exposure, pay to the Administrative Agent on behalf of the Lenders an amount equal to such remaining Borrowing Base Deficiency to be held as cash collateral as provided in Section 2.08(j).

(v) Excess Cash. If the Borrower and the Restricted Subsidiaries have any Excess Cash outstanding for more than three (3) Business Days, the Borrower shall prepay Tranche A Loans on the next succeeding Business Day, which prepayment shall be in an amount equal to the amount of such Excess Cash as of such third (3rd) Business Day; *provided* that all payments required to be made pursuant to this Section 3.04(c)(v) must be made, with respect to any Tranche A Loans or any LC Exposure, on or prior to the Tranche A Termination Date.

(vi) Each prepayment of Borrowings pursuant to this Section 3.04(c) shall be applied, first, ratably to any Tranche A Borrowings of ABR Loans then outstanding, second, to any Tranche A Borrowings of LIBOR Loans then outstanding, and if more than one Tranche A Borrowing of LIBOR Loans is then outstanding, to each such Tranche A Borrowing of LIBOR Loans in order of priority beginning with the Tranche A Borrowing of LIBOR Loans with the least number of days remaining in the Interest Period applicable thereto and ending with the Tranche A Borrowing of LIBOR Loans with the most number of days remaining in the Interest Period applicable thereto.

(vii) Each prepayment of Borrowings pursuant to this Section 3.04(c) shall be applied to installments of the Loans as directed by the Borrower (or in the absence of direction from the Borrower, in the direct order of maturity) to the Loans included in the prepaid Borrowings *provided*, however, that in each case Tranche A Loans will be repaid first and no Tranche B Loans will be repaid until all such Tranche A Loans are repaid in full. Prepayments pursuant to this Section 3.04(c) shall be accompanied by accrued interest to the extent required by Section 3.02.

(d) No Premium or Penalty. All prepayments permitted or required under this Section 3.04 shall include breakage expense, if any, required under Section 5.02 and shall be without premium or penalty.

Section 3.05 **Fees**.

(a) Commitment Fees. Except as otherwise provided in Section 4.05(a)(iii), the Borrower agrees to pay to the Administrative Agent for the account of each Tranche A Lender a commitment fee, which shall accrue at the applicable Commitment Fee Rate on the average daily amount of the unused amount of the Tranche A Commitment of such Lender during the period from and including the date of this Agreement to but excluding the Tranche A Termination Date. Accrued commitment fees shall be payable in arrears on the last day of March, June, September and December of each year and on the Tranche A Termination Date, commencing on the first such date to occur after the date hereof. All commitment fees shall be computed on the basis of a year of 360 days, unless such computation would exceed the Highest Lawful Rate, in which case interest shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) Letter of Credit Fees. The Borrower agrees to pay to the Administrative Agent for the account of each Tranche A Lender a participation fee with respect to its participations in Letters of Credit, which shall accrue at the same Applicable Margin used to determine the interest rate applicable to LIBOR Loans on the average daily amount of such Tranche A Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the date of this Agreement to but excluding the later of the date on which such Tranche A Lender's Tranche A Commitment terminates and the date on which such Tranche A Lender ceases to have any LC Exposure. The Borrower also agrees to pay to the Issuing Bank, for its own account, (i) a fronting fee, which shall be payable at issuance of each Letter of Credit in an amount equal to 0.125% of the face amount of such Letter of Credit (which, for purposes of this clause (i), shall mean the maximum face amount of such Letter of Credit after giving effect to all provisions in such Letter of Credit providing for future automatic increases in the amount that may be drawn under such Letter of Credit) and (ii) the Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued through and including the last day of March, June, September and December of each year shall be payable on the third Business Day following such last day, commencing on the first such date to occur after the date of this Agreement; *provided* that all such fees shall be payable on the Tranche A Termination Date and any such fees accruing after the Tranche A Termination Date shall be payable on demand. Any other fees payable to the Issuing Bank pursuant to this Section 3.05(b) shall be payable within ten (10) days after demand. All participation fees shall be computed on the basis of a year of 360 days, unless such computation would exceed the Highest Lawful Rate, in which case interest shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) Administrative Agent Fees. The Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent in the Fee Letters.

ARTICLE IV
PAYMENTS; PRO RATA TREATMENT; SHARING OF SET-OFFS

Section 4.01 **Payments Generally; Pro Rata Treatment; Sharing of Set-offs**.

(a) Payments by the Borrower. The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 5.01, Section 5.02, Section 5.03 or otherwise) prior to 1:00 p.m., New York City time, on the date when due, in immediately available funds, and, except as otherwise provided in Section 5.03, without defense, deduction, recoupment, set-off or counterclaim. Fees, once paid, shall be fully earned and shall not be refundable under any circumstances, absent manifest error. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices specified in Section 12.01, except payments to be made directly to the Issuing Bank as expressly provided herein and except that payments pursuant to Section 5.01, Section 5.02, Section 5.03 and Section 12.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

(b) Application of Insufficient Payments. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and second, towards payment of principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(c) Sharing of Payments by Lenders. If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or participations in LC Disbursements resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations in LC Disbursements and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) assignments or participations in the Loans and assignments or participations in LC Disbursements of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and participations in LC Disbursements; *provided* that (i) if any such

assignments or participations are purchased and all or any portion of the payment giving rise thereto is recovered, such assignments or participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this Section 4.01(c) shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to the Borrower or any Restricted Subsidiary thereof (as to which the provisions of this Section 4.01(c) shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such assignments or participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such assignments or participation.

Section 4.02 **Presumption of Payment by the Borrower**. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

Section 4.03 **Deductions by the Administrative Agent**.

(a) Certain Deductions by the Administrative Agent. If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.05(b), Section 2.08(d), Section 2.08(e) or Section 4.02, or otherwise hereunder, then the Administrative Agent may, in its sole discretion (notwithstanding any contrary provision hereof), (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid or (ii) hold any such amounts in a segregated account as Cash Collateral for, and application to, any future funding obligations of such Lender hereunder, in the case of each of clauses (i) and (ii) above, in any order as determined by the Administrative Agent in its discretion.

(b) Payments to Defaulting Lenders. If a Defaulting Lender (or a Lender who would be a Defaulting Lender but for the expiration of the relevant grace period) as a result of the exercise of a set-off shall have received a payment in respect of its Credit Exposure which results in its Credit Exposure being less than its Applicable Percentage of the Aggregate Credit Exposures, then (i) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 4.05 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (ii) no payments will be made to such

Defaulting Lender until such time as such Defaulting Lender shall have complied with Section 4.05, and all amounts due and owing to the Lenders have been equalized in accordance with each Lender's respective *pro rata* share of the Obligations. Further, if at any time prior to the acceleration or maturity of the Loans, the Administrative Agent shall receive any payment in respect of principal of a Loan or a reimbursement of an LC Disbursement while one or more Defaulting Lenders shall be party to this Agreement, the Administrative Agent shall apply such payment first to the Borrowing(s) for which such Defaulting Lender(s) shall have failed to fund its *pro rata* share until such time as such Borrowing(s) are paid in full or each Lender (including each Defaulting Lender) is owed its Applicable Percentage of all Loans then outstanding. After acceleration or maturity of the Loans, subject to the first sentence of this Section 4.03(b), all principal will be paid ratably as provided in Section 10.02(c).

Section 4.04 **Collection of Proceeds of Production**. The Security Instruments contain an assignment by the Borrower and/or the Guarantors to and in favor of the Collateral Agent for the benefit of the Secured Parties of all of the Borrower's or each Guarantor's interest in and to production and all proceeds attributable thereto which may be produced from or allocated to the Mortgaged Property. The Security Instruments further provide in general for the application of such proceeds to the satisfaction of the Obligations and other obligations described therein and secured thereby. Notwithstanding the assignment contained in such Security Instruments, unless an Event of Default has occurred and is continuing, the Collateral Agent and the Lenders will neither notify the purchaser or purchasers of such production nor take any other action to cause such proceeds to be remitted to the Collateral Agent or the Lenders, but the Lenders will instead permit such proceeds to be paid to the Borrower and the other Credit Parties and the Lenders hereby authorize the Collateral Agent or the Administrative Agent to take such actions as may be necessary to cause such proceeds to be paid to the Borrower and the other Credit Parties.

Section 4.05 **Defaulting Lenders**.

(a) Defaulting Lender Adjustments. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender, to the extent not prohibited by applicable law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definitions of Required Lenders and Majority Lenders and in Section 12.02(b).

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article X or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 12.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any Issuing Bank hereunder; third, to Cash Collateralize LC Exposure with respect to such Defaulting Lender in accordance with this Section; fourth, as the Borrower may request (so

long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize future LC Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with this Section; sixth, to the payment of any amounts owing to the Lenders or the Issuing Banks as a result of any judgment of a court of competent jurisdiction obtained by any Lender or any Issuing Bank against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement or under any other Loan Document; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement or under any other Loan Document; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans or LC Disbursements in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 6.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and LC Disbursements owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or LC Disbursements owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in the Borrower's obligations corresponding to such Defaulting Lender's LC Exposure are held by the Lenders pro rata in accordance with the Commitments without giving effect to clause (iv) below. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any commitment fee pursuant to Section 3.05(a) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive Letter of Credit fees pursuant to Section 3.05(b) for any period during which that Tranche A Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.08(j).

(iv) Reallocation of LC Exposure. If any LC Exposure exists at the time such Tranche A Lender becomes a Defaulting Lender then:

(A) all or any part of the LC Exposure of such Defaulting Lender shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages but only to the extent that such reallocation does not, as to any Non-Defaulting Lender, cause such Non-Defaulting Lender's Revolving Credit Exposure to exceed its Tranche A Commitment;

(B) if the reallocation described in clause (A) above cannot, or can only partially, be effected, within one (1) Business Day following the written request of the Administrative Agent, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, Cash Collateralize for the benefit of the Issuing Banks only the Borrower's obligations corresponding to such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (A) above) in accordance with the procedures set forth in Section 2.08(j);

(C) if the Borrower Cash Collateralizes any portion of such Defaulting Lender's LC Exposure pursuant to clause (B) above, the Borrower shall not be required to pay any fees to such Defaulting Lender pursuant to Section 3.05(b) with respect to such Defaulting Lender's LC Exposure during the period such Defaulting Lender's LC Exposure is Cash Collateralized;

(D) if the LC Exposure of the Non-Defaulting Lenders is reallocated pursuant to clause (A) above, then the fees payable to the Lenders pursuant to Section 3.05(a) and Section 3.05(b) shall be adjusted in accordance with such Non-Defaulting Lenders' Applicable Percentages; and

(E) if all or any portion of such Defaulting Lender's LC Exposure is neither reallocated nor Cash Collateralized pursuant to clause (A) or (B) above, then, without prejudice to any rights or remedies of any Issuing Bank or any other Lender hereunder, all fees payable under Section 3.05(a) that otherwise would have been payable to such Defaulting Lender (solely with respect to the portion of such Defaulting Lender's Commitment that was utilized by such LC Exposure) and payable under Section 3.05(b) with respect to such Defaulting Lender's LC Exposure shall be payable to the Issuing Banks until and to the extent that such LC Exposure is reallocated and/or Cash Collateralized.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent and Issuing Bank agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit to be held pro rata by the Lenders in accordance with the Commitments (without giving effect to Section 4.05(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and *provided, further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) New Letters of Credit. If (i) a Bankruptcy Event or a Bail-In Action with respect to a Lender Parent shall occur following the date hereof and for so long as such event shall

continue or (ii) any Issuing Bank has a good faith belief that any Tranche A Lender is a Defaulting Lender, no Issuing Bank shall be required to issue, amend or increase any Letter of Credit, unless it is satisfied that the related exposure and the Defaulting Lender's then outstanding LC Exposure will be 100% covered by the Tranche A Commitments of the Non-Defaulting Lenders constituting Tranche A Lenders and/or Cash Collateral will be provided by the Borrower in accordance with Section 4.05(a)(iv), and LC Exposure related to any newly issued or increased Letter of Credit shall be allocated among Non-Defaulting Lenders constituting Tranche A Lenders in a manner consistent with Section 4.05(a)(iv)(A) (and such Defaulting Lender shall not participate therein).

ARTICLE V
INCREASED COSTS; BREAK FUNDING PAYMENTS; TAXES; ILLEGALITY

Section 5.01 **Increased Costs**.

(a) Changes in Law. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or Issuing Bank; or

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its Loans, Loan principal, Commitments, Letters of Credit or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or Issuing Bank or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, continuing, converting or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender, such Issuing Bank or such other Recipient of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender, such Issuing Bank or such other Recipient hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender, such Issuing Bank or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, such Issuing Bank or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or liquidity or on the capital or liquidity of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing

Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy and liquidity), then from time to time, upon receipt of a certificate described in the following clause (c) the Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) Certificates. A certificate of a Lender or the Issuing Bank setting forth, in reasonable detail, the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in Section 4.01(a) or (b) shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Effect of Failure or Delay in Requesting Compensation. Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section 5.01 shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section 5.01 for any increased costs or reductions incurred more than 270 days prior to the date that such Lender or the Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Bank's intention to claim compensation therefor; *provided, further*, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 5.02 **Break Funding Payments**. In the event of (a) the payment of any principal of any LIBOR Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default but excluding any prepayment of Loans on account of a Benchmark Transition Event), (b) the conversion of any LIBOR Loan into an ABR Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert or continue any LIBOR Loan on the date specified in any notice delivered pursuant hereto, or (d) the assignment of any LIBOR Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 5.05, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a LIBOR Loan, such loss, cost or expense to any Lender shall be deemed to be the excess, if any, of (x) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (y) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market.

A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section 5.02 shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

Section 5.03 **Taxes**.

(a) Issuing Bank. For purposes of this Section 5.03, the term "Lender" includes Issuing Bank and the term "applicable law" includes FATCA.

(b) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrower or any Guarantor under any Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes, except as otherwise required by applicable law. If an applicable Withholding Agent shall be required to deduct or withhold any Indemnified Taxes from such payments under applicable law (as determined in the good faith of an applicable Withholding Agent), then (i) the sum payable shall be increased as necessary so that after making any required deductions or withholding of Indemnified Taxes (including deductions applicable to additional sums payable under this Section 5.03(b)), the Administrative Agent, any Lender or Issuing Bank (as the case may be) receives an amount equal to the sum it would have received had no such deduction or withholding been made, (ii) the Borrower or such Guarantor (or other applicable Withholding Agent) shall make such deductions or withholding and (iii) the Borrower or such Guarantor (or other applicable Withholding Agent) shall pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law.

(c) Payment of Other Taxes by the Borrower. Without duplication of the Borrower's obligations under Section 5.03(b), the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent, timely reimburse it for the payment of, any Other Taxes that have been paid by the Administrative Agent.

(d) Indemnification by the Borrower. The Borrower shall indemnify each Recipient, within thirty (30) days after demand therefor, for the full amount of any Indemnified Taxes paid or payable by such Recipient, or required to be withheld or deducted from a payment to such Recipient, on or with respect to any payment by or on account of any obligation of the Borrower hereunder (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 5.03, but without duplication of any amount indemnified or paid under any provisions of this Agreement) and any reasonable out-of-pocket expenses arising therefrom or with respect thereto, in each case, other than any interest, additions to tax or penalties resulting from the bad faith or willful misconduct of any Recipient. A certificate of the Administrative Agent, a Lender or the Issuing Bank as to the amount of such payment or liability, and setting forth in reasonable detail the basis for such Indemnified Taxes, delivered to the Borrower by a Lender or the Issuing Bank (with a copy to the Administrative Agent) or by the Administrative Agent on its own behalf or on behalf of a Lender or the Issuing Bank, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 12.04 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the

Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes by the Borrower or a Guarantor to a Governmental Authority, the Borrower or Guarantor shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, or otherwise, with respect to payments under this Agreement or any other Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution, and submission of such documentation (other than such documentation set forth in Section 5.03(g)(ii)(A), (ii)(B), or (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing:

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of Internal Revenue Service Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Non-U.S. Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Non-U.S. Lender becomes a

Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Non-U.S. Lender claiming the benefits of an income tax treaty to which the United States is a party, duly completed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable, claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(2) duly completed copies of Internal Revenue Service Form W-8ECI,

(3) in the case of a Non-U.S. Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit G-1 to the effect that such Non-U.S. Lender is not a "bank" within the meaning of section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) duly completed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable;

(4) to the extent a Non-U.S. Lender is not the beneficial owner, executed copies of Internal Revenue Service Form W-8IMY, accompanied by Internal Revenue Service Form W-8ECI, Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or Exhibit G-3, Internal Revenue Service Form W-9, and/or other certification documents from each beneficial owner, as applicable; *provided* that if the Non-U.S. Lender is a partnership and one or more direct or indirect partners of such Non-U.S. Lender are claiming the portfolio interest exemption, such Non-U.S. Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-4 on behalf of each such direct and indirect partner; or

(C) any Non-U.S. Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Non-U.S. Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. Federal withholding Tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and Administrative Agent, at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent, such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such

additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for Borrower and the Administrative Agent to comply with its obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(h) Treatment of Certain Refunds. If the Administrative Agent, a Lender or the Issuing Bank determines, that it has received a refund of any Indemnified Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 5.03, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 5.03 with respect to the Indemnified Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent, such Lender or the Issuing Bank, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this clause (h) (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this clause (h), in no event will the indemnified party be required to pay any amount to the Borrower pursuant to this clause (h) to the extent such payment would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the Borrower or any other Person.

(i) The Administrative Agent, and any successor or supplemental Administrative Agent, shall deliver to the Borrower (in such number of copies as shall reasonably be requested by the recipient) on or prior to the date on which the Administrative Agent becomes the Administrative Agent hereunder or under any other Loan Document (and from time to time thereafter upon the reasonable request of the Borrower) executed copies of either (i) IRS Form W-9 (or any successor form) or (ii) a U.S. branch withholding certificate on IRS Form W-8IMY (or any successor form) evidencing its agreement with the Borrower to be treated as a U.S. person (with respect to amounts received on account of any Lender) and IRS Form W-8ECI (with respect to amounts received on its own account). The Administrative Agent agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower in writing of its legal inability to do so.

(j) Survival. Each party's obligations under this Section 5.03 shall survive the resignation or replacement of the Administrative Agent or the Collateral Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

Section 5.04 **Mitigation Obligations; Designation of Different Lending Office**. If any Lender requests compensation under Section 5.01, or if the Borrower is required to pay any Indemnified Taxes or additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.03, then such Lender shall (at the request of Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment would eliminate or reduce amounts payable pursuant to Section 5.01 or Section 5.03, as the case may be, in the future and would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

Section 5.05 **Replacement of Lenders**. If (a) any Lender requests compensation under Section 5.01, (b) the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.03, and such Lender has not prevented such required payment by designating a different lending office in accordance with Section 5.04, (c) any Lender is a Defaulting Lender, (d) any Lender fails to consent to (i) an amendment, waiver or modification that pursuant to Section 12.02 requires the consent of the Required Lenders, which is otherwise consented to by the Majority Lenders or (ii) a Borrowing Base increase or an election, consent, approval, amendment, waiver or other modification to this Agreement or any other Loan Document that requires the consent of all Lenders or of all Lenders affected thereby, and such Borrowing Base increase, election, consent, amendment, waiver or other modification is otherwise consented to by the Required Lenders, or (e) any Lender has given notice pursuant to Section 5.06 that it is unable to make or maintain LIBOR Loans but Lenders constituting Majority Lenders have not given such notice, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 12.04(b)), all its interests, rights (other than its existing rights to payments pursuant to Section 5.01 or Section 5.03) and obligations under this Agreement and the other Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that (i) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 12.04(b)(ii)(C), (ii) if such assignee is not already a Lender, the Borrower shall have received the prior written consent of the Administrative Agent and the Issuing Bank, which consent shall not unreasonably be withheld, (iii) such assigning Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 5.02), from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts), (iv) in the case of any such assignment resulting from a claim for compensation under Section 5.01 or payments required to be made pursuant to Section 5.03, such assignment will result in a reduction in such compensation or payments, (v) such assignment does not conflict

with applicable law; and (vi) in the case of any assignment resulting from a Lender not consenting to a Borrowing Base increase or an election, consent, approval, amendment, waiver or other modification as described in clause (d) above, the applicable assignee shall have consented to the applicable Borrowing Base increase, election, consent, approval, amendment, waiver or other modification. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Each party hereto agrees that (x) an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and such parties are participants) and (y) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to an be bound by the terms thereof; *provided* that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender; *provided* that any such documents shall be without recourse to or warranty by the parties thereto.

Section 5.06 **Illegality**. Other than in respect of Section 3.03(b), notwithstanding any other provision of this Agreement, in the event that it becomes unlawful for any Lender or its applicable lending office to honor its obligation to make or maintain LIBOR Loans either generally or having a particular Interest Period hereunder, then (a) such Lender shall promptly notify the Borrower and the Administrative Agent thereof and such Lender's obligation to make such LIBOR Loans shall be suspended (the "Affected Loans") until such time as such Lender may again make and maintain such LIBOR Loans and (b) all Affected Loans which would otherwise be made by such Lender shall be made instead as ABR Loans (and, if such Lender so requests by notice to the Borrower and the Administrative Agent, all Affected Loans of such Lender then outstanding shall be automatically converted into ABR Loans on the date specified by such Lender in such notice) and, to the extent that Affected Loans are so made as (or converted into) ABR Loans, all payments of principal which would otherwise be applied to such Lender's Affected Loans shall be applied instead to its ABR Loans.

ARTICLE VI
CONDITIONS PRECEDENT

Section 6.01 **Effective Date**. The rights and obligations under this Agreement (including the obligations of the Lenders to make Loans and of the Issuing Banks to issue Letters of Credit hereunder) shall not become effective until the date on which each of the following conditions has been satisfied (or waived in accordance with Section 12.02):

(a) The Administrative Agent, the Collateral Agent, the Arrangers and the Lenders shall have received all commitment and agency fees and all other fees and amounts due and payable on or prior to the Effective Date, including, without duplication, (i) fees payable pursuant to Section 3.05(c), (ii) fees payable pursuant to the Fee Letters and (iii) to the extent invoiced at least three (3) Business Days prior to the Effective Date, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Borrower hereunder and under the Commitment Letter (including the fees and expenses of Sidley Austin LLP, counsel to the

Administrative Agent), in each case, substantially concurrently with the initial extensions of credit under this Agreement which amounts may be offset against the proceeds of the Loans.

(b) The Administrative Agent shall have received a certificate of the Secretary, Assistant Secretary or a Responsible Officer of the Borrower and each Guarantor setting forth (i) resolutions of the members, board of directors or other appropriate governing body with respect to the authorization of the Borrower or such Guarantor to execute and deliver the Loan Documents to which it is a party and to enter into the transactions contemplated in those documents, (ii) the officers of the Borrower or such Guarantor who are authorized to sign the Loan Documents to which the Borrower or such Guarantor is a party and who will, until replaced by another officer or officers duly authorized for that purpose, act as its representative for the purposes of signing documents and giving notices and other communications in connection with this Agreement and the transactions contemplated hereby, (iii) specimen signatures of such authorized officers, and (iv) the limited liability company agreement, the articles or certificate of incorporation and bylaws (or comparable organizational documents) of the Borrower and such Guarantor, certified as being true and complete. The Administrative Agent and the Lenders may conclusively rely on such certificate until the Administrative Agent receives notice in writing from the Borrower to the contrary.

(c) The Administrative Agent shall have received certificates of the appropriate State agencies from (i) the jurisdiction of organization of each Credit Party with respect to the existence and good standing of the Borrower and each other Credit Party and (ii) each jurisdiction (if any) where each Credit Party holds material Borrowing Base Properties with respect to the qualification of the Borrower or such Credit Party to operate as a foreign corporation, or its equivalent.

(d) On the Effective Date, the representations and warranties of the Borrower and the other Credit Parties contained in Article VII shall be true and correct in all material respects, except that (i) in the case of any representation or warranty which expressly relates to a given date or period, such representation or warranty shall be true and correct in all material respects as of the respective date or for the respective period, as the case may be and (ii) to the extent that any representation or warranty is qualified by or subject to a "material adverse effect", "material adverse change" or similar term or qualification, the same shall be true and correct in all respects.

(e) The Administrative Agent shall have received from each party hereto counterparts (in such number as may be reasonably requested by the Administrative Agent) of this Agreement signed on behalf of such party.

(f) The Administrative Agent shall have received a duly executed Note payable to each Tranche A Lender and each Tranche B Lender that has requested a Note at least two (2) Business Days before the Effective Date in a principal amount equal to its Tranche A Commitment or Tranche B Commitment, as the case may be, dated as of the date hereof.

(g) The Administrative Agent shall have received from each party thereto duly executed counterparts (in such number as may be reasonably requested by the Administrative Agent) of the Security Instruments described on Exhibit E. Subject to Section 8.20, in connection

with the execution and delivery of the Security Instruments, the Administrative Agent shall be reasonably satisfied that (i) the Liens under the Security Instruments will, upon the recording of the Security Instruments, be first priority (subject to Permitted Liens), perfected Liens on all other Property purported to be pledged as Collateral pursuant to the Security Instruments (including all of the Stock in the Borrower and each Restricted Subsidiary that are owned by a Credit Party (and to the extent any such Stock are certificated, the Borrower shall also have caused the applicable Credit Party to deliver to the Collateral Agent the original stock certificates evidencing such Stock together with an appropriate undated stock power for each certificate duly executed in blank by the registered owner thereof)) and (ii) upon recording the Security Instruments, in the appropriate filing offices, it shall have a first priority Lien (subject to Permitted Liens) on at least ninety percent (90%) of the PV-10 of the Borrowing Base Properties; *provided* that, notwithstanding anything to the contrary in this clause (g), with respect to all Collateral constituting personal property, the Credit Parties shall not be required to take any action to perfect a Lien on any such assets unless such perfection may be accomplished by (A) the filing of a UCC-1 financing statement or other equivalent filing, (B) delivery of any certificates representing any Stock constituting Collateral, in each case, with appropriate endorsements or transfer powers, or (C) delivery to the Collateral Agent all Account Control Agreements (in each case duly executed and delivered by the relevant Credit Party and relevant depository bank) covering all Deposit Accounts and Security Accounts (other than any Excluded Accounts) existing as of the Effective Date; *provided* that subject to the Borrower and the other Credit Parties using commercially reasonable efforts to deliver such Account Control Agreements by the Effective Date, if such Account Control Agreements have not been delivered on or prior to the Effective Date, the delivery of such Account Control Agreements shall not be a condition to the occurrence of the Effective Date and shall instead be required to be delivered pursuant to Section 8.20(b).

(h) The Administrative Agent shall have received an opinion of (i) Kirkland & Ellis LLP, special New York counsel to the Borrower and the Guarantors and (ii) local counsel to the Borrower and the Guarantors in the State of Oklahoma, Louisiana, Pennsylvania and Texas, in each case in form and substance reasonably satisfactory to the Administrative Agent.

(i) The Administrative Agent shall have received a certificate of insurance coverage of the Borrower and the other Credit Parties evidencing that the Borrower and the other Credit Parties are carrying insurance in accordance with Section 7.12; *provided* that subject to the Borrower and the other Credit Parties using commercially reasonable efforts to deliver the applicable insurance certificates and/or endorsements referenced therein by the Effective Date, if such certificates and/or endorsements have not been delivered on or prior to the Effective Date, the delivery of such certificates and/or endorsements shall not be a condition to the occurrence of the Effective Date and shall instead be required to be delivered pursuant to Section 8.20(c).

(j) The Administrative Agent shall have received a solvency certificate (giving *pro forma* effect to the Transactions contemplated to occur on the Effective Date) substantially in the form of Exhibit J and signed by a Financial Officer.

(k) The Administrative Agent shall have received (i) a reasonably satisfactory Initial Reserve Report (it being agreed that the reserve report with an “as of” date of January 1, 2021 previously provided by the Borrower to the Administrative Agent is reasonably satisfactory) and (ii) lease operating statements and production reports with respect to the Borrowing Base

Properties evaluated in the Initial Reserve Report for each fiscal quarter ended since the Petition Date and ending at least sixty (60) days prior to the Effective Date and, to the extent that the Effective Date occurs on or after the day that is 60 days after the fiscal year ended December 31, 2020, for the fiscal year ended December 31, 2020, which shall be in form and substance reasonably satisfactory to the Administrative Agent.

(l) The Administrative Agent shall have received title information in form and substance acceptable to it covering not less than 85% of the total PV-10 of the Borrowing Base Properties evaluated in the Initial Reserve Report; *provided* that subject to the Borrower and the other Credit Parties using commercially reasonable efforts to deliver such title information by the Effective Date, if such title information has not been delivered on or prior to the Effective Date, the delivery of such title information shall not be a condition to the occurrence of the Effective Date and shall instead be required to be delivered pursuant to Section 8.20(a).

(m) The Administrative Agent shall have received appropriate customary UCC, tax and judgment searches with respect to the Credit Parties reflecting no prior Liens encumbering the Properties of the Borrower and the other Credit Parties for the State of Delaware and any other jurisdiction reasonably requested by the Administrative Agent, other than those being released on or prior to the Effective Date or Permitted Liens.

(n) The Administrative Agent shall have received evidence reasonably satisfactory to it that (i) the Transactions are being consummated substantially concurrently with the initial fundings under this Agreement and all loans and other obligations under, and the agreements in respect of, the Pre-Petition Credit Agreement and the DIP Credit Agreement, in each case, are being repaid or otherwise satisfied in full and terminated in a manner consistent with the Plan of Reorganization, other than Existing Letters of Credit deemed issued under this Agreement on the Effective Date and (ii) the Liens securing the obligations under the Pre-Petition Credit Agreement and the DIP Credit Agreement, in each case, are being released substantially contemporaneously with the occurrence of the Effective Date. After giving effect to the Transactions, the Borrower and its Subsidiaries shall have no Indebtedness outstanding other than (A) the Obligations and (B) any other Indebtedness permitted by Section 9.02 (other than clauses (p), (s), (x) and (y) of Section 9.02). The Administrative Agent shall have received evidence reasonably satisfactory to it that all Liens on the assets of the Borrower and its Subsidiaries (other than Permitted Liens) have been (or will be concurrently with the initial funding of Loans under this Agreement on the Effective Date) released or terminated and that duly executed recordable releases and terminations in forms reasonably acceptable to the Administrative Agent with respect thereto have been obtained by the Borrower or its Subsidiaries, as applicable.

(o) The Administrative Agent shall have received a certificate of a Responsible Officer of the Borrower certifying the absence of any action, suit, investigation or proceeding pending or threatened in any court or before any arbitrator or governmental authority that would reasonably be expected to have a material adverse effect on the consummation of the Plan of Reorganization.

(p) The Administrative Agent and each Lender who has requested the same shall have received, at least five (5) Business Days prior to the Effective Date, (i) all documentation and other information regarding the Borrower in connection with applicable "know your

customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, and (ii) to the extent the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, a Beneficial Ownership Certification in a form reasonably satisfactory to the Administrative Agent and each requesting Lender, in the case of clauses (i) and (ii), to the extent reasonably requested in writing at least ten (10) Business Days prior to the Effective Date (*provided* that, upon the execution and delivery by such Lender of its signature page to this Agreement, the condition set forth in this clause (q) shall be deemed to be satisfied).

(q) The Administrative Agent shall be reasonably satisfied and shall have received a certificate from a Financial Officer of the Borrower stating that, after giving *pro forma* effect to the Transactions that will occur on the Effective Date (including the initial Borrowings hereunder), (i) the Consolidated Secured Indebtedness Coverage Ratio as of the Effective Date shall be no less than 1.5 to 1.0 and (ii) the Consolidated Total Net Leverage Ratio is no greater than 2.25 to 1.00; provided, that for purposes of calculating Consolidated Secured Indebtedness Coverage Ratio and Consolidated Total Net Leverage Ratio for this clause (q), EBITDAX and Indebtedness shall be an amount equal to Borrower's good faith best estimate of EBITDAX for the fiscal quarter ending on December 31, 2020 *multiplied by* 4 and Indebtedness, as applicable.

(r) The Administrative Agent shall have received a certificate from a Financial Officer of the Borrower (i) stating that (x) the Borrower has received cash equity contributions in an aggregate amount no less than $600 million pursuant to the Backstop Commitment Agreement (as defined in the Restructuring Support Agreement), (y) after giving effect to the Transactions, the total Credit Exposures of the Lenders shall be no greater than $1,250 million and (z) after giving effect to the Transactions, minimum liquidity (including unrestricted cash on hand and Availability) of the Borrower and the Restricted Subsidiaries shall be no less than $500 million, (ii) attaching the Historical Financial Statements or providing a link thereto on which such documents are posted on an Internet or intranet website (including the SEC's EDGAR website) to which each Lender and the Administrative Agent have access and (iii) setting forth the calculation of Adjusted Consolidated Net Tangible Assets of the Effective Date after giving effect to the Transactions to occur on the Effective Date.

(s) The Borrower and the Restricted Subsidiaries shall have paid to the DIP Lenders holding DIP Loans all other payments as provided for in any final orders entered in connection with the DIP Credit Agreement and/or use of cash collateral, and the Plan of Reorganization, which amounts shall be applied to the repayment of the obligations under the DIP Credit Agreement in accordance with the Plan of Reorganization. Immediately prior to the Effective Date, the DIP Credit Agreement and the Restructuring Support Agreement shall be in full force and effect and no default or event of default shall have occurred and be continuing pursuant to the terms of the DIP Credit Agreement or the Restructuring Support Agreement.

(t) The (i) terms of the Plan of Reorganization, the Confirmation Order and any related order of the Bankruptcy Court (and any amendments or modifications to any of the foregoing) shall be consistent with the Restructuring Support Agreement (other than any changes to the terms described therein that would not reasonably be expected to adversely affect the interests of the Administrative Agent or the Lenders in any material respect) and be in substance reasonably satisfactory to the Administrative Agent and shall provide for approval of this Agreement and contain customary releases and exculpations, in each case that are reasonably

acceptable to the Administrative Agent (it being agreed and understood that the Plan of Reorganization attached hereto as Exhibit K is reasonably satisfactory to the Administrative Agent) and (ii) the Bankruptcy Court shall have entered the Confirmation Order approving the Plan of Reorganization, which such order shall in full force and effect and be reasonably satisfactory to the Administrative Agent, and such order shall have become a final order of the Bankruptcy Court and shall not have been stayed, reversed, vacated, amended, supplemented or otherwise modified in any manner and shall not be subject to any pending appeals other than appeals that result of which would not have a materially adverse effect on the rights and interests of the Administrative Agent and the Lenders.

(u) The Administrative Agent shall have received satisfactory evidence as to the payment in full on the Plan Effective Date of all material administrative expense claims, priority claims and other claims (including professional and transaction fees) required to be paid upon the Plan Effective Date.

(v) The Plan Effective Date shall have occurred, all conditions precedent to the confirmation and effectiveness of the Plan, as set forth in the Plan (other than the effectiveness of this Agreement and the other Loan Documents, which shall occur contemporaneously with the Plan Effective Date) shall have been fulfilled or waived as permitted therein, including, without limitation, all transactions contemplated in the Plan or the Confirmation Order to occur on the Plan Effective Date shall have been substantially consummated in accordance with the terms thereof and in compliance with applicable law, Bankruptcy Court and regulatory approvals.

(w) The Administrative Agent shall have received a certificate of a Responsible Officer of the Borrower certifying that (i) all material governmental and third party approvals necessary in connection with by the terms of the Loan Documents, the consummation of the Plan of Reorganization and the other Transactions, and the continuing operations of the Borrower and its Subsidiaries shall have been obtained (or will be substantially concurrently obtained) and be in full force and effect, and (ii) since the Petition Date, no Material Adverse Effect shall have occurred. For purposes of this Section 6.01(w) only, "Material Adverse Effect" means any material adverse change in, or material adverse effect on the business, operations, property, liabilities (actual or contingent) or condition (financial or otherwise) of the Credit Parties, taken as a whole, other than any change, event, or occurrence, arising individually or in the aggregate, from events that could reasonably be expected to result from the filing or commencement of the Chapter 11 Cases or the announcement or the filing or commencement of the Chapter 11 Cases.

(x) The Arrangers shall have received the Historical Financial Statements (it being agreed and understood that the financial statements described in clauses (a) and (b) in the definition of "Historical Financial Statements" have been satisfied with respect to the fiscal year of the Borrower ended December 31, 2019 and the fiscal quarter ended March 31, 2020).

(y) The Administrative Agent shall have received reasonably satisfactory evidence that the Borrower and its Restricted Subsidiaries have entered into Swap Agreements with one or more Approved Counterparties meeting the requirements under Section 8.19.

Without limiting the generality of the provisions of Section 11.04, for purposes of determining compliance with the conditions specified in this Section 6.01, each Lender that has signed this

Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required under this Section 6.01 to be consented to or approved by or acceptable to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the Effective Date specifying its objection thereto. The Administrative Agent shall notify the Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding.

Section 6.02 **Each Credit Event**. The obligation of each Lender to make any new Loan, and of the Issuing Bank to issue, amend, renew or extend any Letter of Credit is subject to the satisfaction of the following conditions (including without limitation, the Loans and issuances of Letters of Credit on the Effective Date):

(a) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default shall have occurred and be continuing.

(b) The representations and warranties of the Credit Parties set forth in this Agreement and in the other Loan Documents shall be true and correct in all material respects on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable, except (i) to the extent any such representations and warranties are expressly limited to an earlier date, in which case, on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable, such representations and warranties shall be true and correct in all material respects as of such specified earlier date, and (ii) to the extent that any such representation and warranty is expressly qualified by materiality or by reference to Material Adverse Effect, such representation and warranty (as so qualified) shall be true and correct in all respects.

(c) At the time of and immediately after giving effect to such Borrowing (and the application of the proceeds thereof on the date of the requested Borrowing) or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, the Borrower and the Restricted Subsidiaries shall not have any Excess Cash immediately before or after giving effect to such Borrowing, in each case determined after giving effect to any intended use of proceeds in the ordinary course of business (as certified by the Borrower, to the extent applicable, in the related Borrowing Request, and including, for the avoidance of doubt, any purpose permitted by Section 9.11) on or before the date that is three Business Days after the date the Borrower receives the funds from such Borrowing, nor may such Borrowing, after giving effect to any such intended use of proceeds in the ordinary course of business (as certified by the Borrower, to the extent applicable, in the related Borrowing Request), be in an amount that would trigger a mandatory prepayment under Section 3.04(c)(v), and such Loans shall be funded into and maintained until used in accordance with this Agreement in (A) an account of the Borrower over which the Collateral Agent has "control" (within the meaning of Section 9-104 of the UCC) or (B) an Excluded Account to the extent permitted in accordance with the definition thereof.

(d) The receipt by the Administrative Agent of a Borrowing Request in accordance with Section 2.03 or a request for a Letter of Credit (including an amendment, extension or renewal of a Letter of Credit) in accordance with Section 2.08(b), as applicable.

Each request for a Borrowing and each request for the issuance, amendment, renewal or extension of any Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in the foregoing clauses (a) through (c).

ARTICLE VII
REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lenders, on the Effective Date and on each other date as required by this Agreement and each other Loan Document, that:

Section 7.01 **Corporate Status; Organization; Powers**. Each of the Borrower and each Restricted Subsidiary (a) is a duly organized and validly existing corporation or other entity in good standing under the laws of the jurisdiction of its organization, (b) has the corporate or other organizational power and authority to own its property and assets and to transact the business in which it is engaged, and (c) has duly qualified and is authorized to do business and is in good standing in all jurisdictions where it is required to be so qualified, except in each case referred to in clauses (b) and (c), where the failure to have such power and authority or be so qualified would not reasonably be expected to result in a Material Adverse Effect.

Section 7.02 **Authority; Enforceability**. After giving effect to the Confirmation Order and the Plan of Reorganization, the Borrower and each Restricted Subsidiary has the corporate or other organizational power and authority to execute, deliver and carry out the terms and provisions of the Loan Documents to which it is a party and has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party. Each of the Borrower and each Guarantor has duly executed and delivered each Loan Document to which it is a party and each such Loan Document constitutes the legal, valid and binding obligation of the Borrower and such Guarantor enforceable in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization and other similar laws relating to or affecting creditors' rights generally and general principles of equity (whether considered in a proceeding in equity or law).

Section 7.03 **No Violation**. After giving effect to the Confirmation Order and the Plan of Reorganization, none of the execution, delivery or performance by any Credit Party of the Loan Documents to which it is a party or the compliance with the terms and provisions thereof will (a) contravene any material applicable provision of any material Requirement of Law, (b) result in any breach of any terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien upon any property or assets of such Credit Party or any Restricted Subsidiary (other than Liens created under the Loan Documents) pursuant to the terms of any indenture, loan agreement, lease agreement, mortgage, deed of trust, agreement or other instrument to which such Credit Party or any Restricted Subsidiary is a party or by which it or any of its property or assets is bound (any such term, covenant, condition or provision, a "Contractual Requirement") except to the extent such breach, default or Lien that would not reasonably be expected to result in a Material Adverse Effect or

(c) violate any provision of the certificate of incorporation, by-laws or other organizational documents of such Credit Party or any Restricted Subsidiary.

Section 7.04 **Financial Condition; No Material Adverse Effect**.

(a) The Historical Financial Statements present fairly in all material respects the combined consolidated financial position of the Borrower and the combined consolidated Subsidiaries at the dates of such information and for the period covered thereby and have been prepared in accordance with GAAP consistently applied (subject to the impact of fresh start accounting) except to the extent provided in the notes thereto, if any, subject, in the case of the unaudited financial information, to changes resulting from audit, normal year end audit adjustments and to the absence of footnotes.

(b) Neither the Borrower nor any Restricted Subsidiary has any material Indebtedness (including Disqualified Stock), off balance sheet liabilities, partnership liabilities for taxes, or unusual forward or long-term commitments that, in each case, are not reflected or provided for in the Historical Financial Statements, except as would not reasonably be expected to have a Material Adverse Effect.

(c) No Material Adverse Effect has occurred since the Effective Date.

Section 7.05 **Litigation**

. After giving effect to the Confirmation Order and the Plan of Reorganization, except as set forth on Schedule 7.05, there are no actions, suits or proceedings pending or, to the knowledge of a Responsible Officer of the Borrower, threatened with respect to the Borrower or any Restricted Subsidiary, that would reasonably be expected to result in a Material Adverse Effect.

Section 7.06 **Environmental Laws**.

(a) Except as would not reasonably be expected to have a Material Adverse Effect: (i) the Borrower and each of the Restricted Subsidiaries and all Oil and Gas Properties are in compliance with all applicable Environmental Laws; (ii) neither the Borrower nor any Restricted Subsidiary has received written notice of any liability under any applicable Environmental Law; (iii) neither the Borrower nor any Restricted Subsidiary is conducting any investigation, removal, remedial or other corrective action pursuant to any applicable Environmental Law at any location; and (iv) there has been no Release or, to the knowledge of any Responsible Officer of the Borrower, threatened Release of any Hazardous Materials at, on or under any Oil and Gas Properties currently owned or leased by the Borrower or any Restricted Subsidiary.

(b) Except as would not reasonably be expected to have a Material Adverse Effect, neither the Borrower nor any Restricted Subsidiary has treated, stored, transported, released or disposed or arranged for disposal or transport for disposal of Hazardous Materials at, on, under or from any currently or formerly owned or leased Oil and Gas Properties in a manner that would reasonably be expected to give rise to liability of the Borrower or any Restricted Subsidiary under any applicable Environmental Law.

Section 7.07 **Governmental Approvals; No Defaults**.

(a) After giving effect to the Confirmation Order and the Plan of Reorganization, the execution, delivery and performance of each Loan Document do not require any consent or approval of, registration or filing with, or other action by, any Governmental Authority, except for (i) such as have been obtained or made and are in full force and effect, (ii) filings and recordings in respect of the Liens created pursuant to the Security Instruments, (iii) any reports required to be filed by the Borrower with the SEC pursuant to the Exchange Act, (iv) those that may be required from time to time in the ordinary course of business that may be required to comply with certain covenants contained in the Loan Documents, and (v) such consents, approvals, registrations, filings or actions the failure of which to obtain or make would not reasonably be expected to have a Material Adverse Effect.

(b) No Credit Party is in default under or with respect to any Contractual Requirement that would, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the Transactions.

Section 7.08 **Investment Company Act**. No Credit Party is an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

Section 7.09 **Taxes**. Except where the failure of which would not be reasonably expected to have a Material Adverse Effect, each of the Borrower and the Restricted Subsidiaries has filed all U.S. federal income tax returns and all other tax returns, domestic and foreign, required to be filed by it and has paid or caused to be paid all material Taxes payable by it that have become due, other than those (i) not yet delinquent, (ii) being contested in good faith by appropriate proceedings and as to which adequate reserves have been provided to the extent required by and in accordance with GAAP, or (iii) the nonpayment of which is permitted or required pursuant to the Bankruptcy Code.

Section 7.10 **ERISA**. No ERISA Event has occurred or is reasonably expected to occur that would reasonably be expected to result in a Material Adverse Effect. Each Plan is in compliance with applicable provisions of ERISA, the Code and other applicable laws except to the extent failure to comply would not reasonably be expected to result in a Material Adverse Effect.

Section 7.11 **True and Complete Disclosure; Beneficial Ownership Certification**.

(a) None of the written factual information and written data (taken as a whole) furnished by or on behalf of the Borrower, any Subsidiary or any of their respective authorized representatives to the Administrative Agent, any Arranger, and/or any Lender (including all such information and data contained in the Loan Documents) for purposes of or in connection with this Agreement or any Transaction contained any untrue statement of any material fact or omitted to state any material fact necessary to make such information and data (taken as a whole) not materially misleading at such time (after giving effect to all supplements so furnished before such time) in light of the circumstances under which such information or data was furnished; it being understood and agreed that for purposes of this Section 7.11(a), such factual information and data

shall not include pro forma financial information, projections or estimates (including financial estimates, forecasts and other forward-looking information) and information of a general economic or general industry nature.

(b) The projections (including financial estimates, forecasts and other forward-looking information) contained in the information and data referred to in Section 7.11(a) were based on good faith estimates and assumptions believed by the Borrower to be reasonable at the time made; it being recognized by the Administrative Agent and the Lenders that such projections are as to future events and are not to be viewed as facts, the projections are subject to significant uncertainties and contingencies, many of which are beyond the control of the Borrower and the Subsidiaries, that no assurance can be given that any particular projections will be realized and that actual results during the period or periods covered by any such projections may differ from the projected results and such differences may be material.

(c) As of the Effective Date, the information in the Beneficial Ownership Certifications delivered to the Administrative Agent or any Lender is true and correct in all material respects.

Section 7.12 **Insurance**. The Borrower has, and has caused the Restricted Subsidiaries to have, (a) all insurance policies sufficient for the compliance by each of them with all material Requirements of Law (including Flood Insurance Regulations) and all material agreements and (b) insurance coverage in at least such amounts and against such risks as are usually insured against by companies similarly situated and engaged in the same or a similar business for the assets and operations of the Borrower and the Restricted Subsidiaries (it being understood and agreed that the Borrower and its Subsidiaries may self-insure to the extent and in a manner customary for companies engaged in the same or similar business of similar size and financial condition). The Collateral Agent, on behalf of the Lenders, has been named as additional insureds in respect of such liability insurance policies and the Collateral Agent, on behalf of the Lenders, has been named as a loss payee with respect to such property loss insurance covering Collateral.

Section 7.13 **Pari Passu or Priority Status**. After giving effect to the Confirmation Order and the Plan of Reorganization, no Credit Party has taken any action which would cause the claims of unsecured creditors of any Credit Party (other than claims of such creditors to the extent that they are statutorily preferred or Excepted Liens) to have priority over the claims of the Collateral Agent and the Secured Parties against the Credit Parties under the Loan Documents.

Section 7.14 **Subsidiaries**. Schedule 7.14 lists each Material Subsidiary existing on the Effective Date. Each Guarantor, Material Subsidiary and Unrestricted Subsidiary as of the Effective Date has been so designated on Schedule 7.14.

Section 7.15 **[Reserved]**.

Section 7.16 **Properties**. After giving effect to the Confirmation Order and the Plan of Reorganization:

(a) Each Credit Party has good and defensible title to all of its material properties and assets, free and clear of all Liens other than Liens permitted under Section 9.03 and of all impediments to the use of such properties and assets in such Credit Party's business, except

that no representation or warranty is made with respect to any oil, gas or mineral property or interest to which no proved oil or gas reserves are properly attributed. Except for Liens permitted under Section 9.03, each Credit Party will respectively own in the aggregate, in all material respects, the net interests in production attributable to all material wells and units owned by the Credit Party.

(b) The ownership of such properties shall not in the aggregate in any material respect obligate such Credit Party to bear the costs and expenses relating to the maintenance, development and operations of such properties in an amount materially in excess of the working interest of such properties.

(c) Each Credit Party has paid in all material respects all royalties payable under the oil and gas leases to which it is operator, except those contested in accordance with the terms of the applicable joint operating agreement or otherwise contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of such Credit Party.

Section 7.17 **Swap Agreements and Qualified ECP Counterparty**. The Swap Agreements of the Credit Parties are in compliance with Section 8.19 and Section 9.18. The Borrower is a Qualified ECP Counterparty.

Section 7.18 **Use of Proceeds; Margin Regulations**.

(a) The Borrower will use the proceeds of the Loans (i) to pay Transaction Expenses, (ii) to make Restricted Payments permitted to be made hereunder, (iii) to finance the acquisition, development and exploration of Oil and Gas Properties, (iv) to redeem, defease, prepay or repay Indebtedness permitted to be incurred hereunder, including any fees, premiums and expenses associated therewith and (v) for working capital, capital expenditures and other general corporate purposes of the Borrower and its Restricted Subsidiaries.

(b) The Borrower will use Letters of Credit for general corporate purposes and to support deposits required under purchase agreements pursuant to which the Borrower or its Subsidiaries may acquire Oil and Gas Properties and other assets.

(c) The Borrower shall not request any Borrowing or Letter of Credit, and the Borrower shall not use, and shall procure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use the proceeds of any Borrowing or Letter of Credit (i) in furtherance of an offer, a payment, a promise to pay, or an authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, in violation of applicable Sanctions or (iii) in any manner that would result in the violation of any applicable Sanctions by the Borrower or any of its Subsidiaries.

(d) The proceeds of the Loans or Letters of Credit will not be used by the Borrower or any Subsidiary in violation of the provisions of Regulation T, Regulation U or Regulation X of the Board. The Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying margin stock.

Section 7.19 **Solvency**. After giving effect to the Confirmation Order, the Plan of Reorganization, the Transactions and the other transactions contemplated hereby and thereby and each Borrowing and issuance, amendment, renewal or extension of any Letter of Credit made hereunder, the Borrower, on a consolidated basis with its Restricted Subsidiaries, is Solvent.

Section 7.20 **Anti-Corruption Laws and Sanctions**. The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and its directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Borrower, its Subsidiaries and their respective officers and employees and, to the knowledge of the Responsible Officers of the Borrower, its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects and are not knowingly engaged in any activity that would reasonably be expected to result in the Borrower being designated as a Sanctioned Person. None of (a) the Borrower, any Subsidiary or, to the knowledge of the Responsible Officers of the Borrower, any of their respective directors, officers or employees, or (b) to the knowledge of the Responsible Officers of the Borrower, any agent of the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the Transactions, is a Sanctioned Person. No Borrowing or Letter of Credit, use of proceeds or other Transactions will violate Anti-Corruption Laws or applicable Sanctions.

Section 7.21 **Affected Financial Institutions**. No Credit Party is an Affected Financial Institution.

Section 7.22 **Security Instruments**. After giving effect to the Confirmation Order and the Plan of Reorganization, every Security Instrument is (or, in the case of Security Instruments executed after the Effective Date, will be) effective to create in favor of the Collateral Agent, for its benefit and the benefit of the other Secured Parties, a legal, valid and enforceable Lien in all Collateral (with such exceptions as may be agreed to by the Administrative Agent) described therein owned by the Credit Parties and, when recorded and financing statements in proper form have been filed in the appropriate jurisdictions, constitute a fully perfected Lien on, and security interest in, all right, title and interest of the grantors thereunder in such property in which a perfected Lien can be obtained by the filing of such a financing statement, in each case prior and superior in right to any other Lien other than Excepted Liens.

ARTICLE VIII
AFFIRMATIVE COVENANTS

Until Payment in Full, the Borrower covenants and agrees with the Lenders that:

Section 8.01 **Financial Statements; Other Information**. The Borrower will furnish to the Administrative Agent (which shall promptly make such information available to each Lender):

(a) Annual Financial Statements. As soon as available and in any event within five Business Days after the date on which such financial statements are required to be filed with the SEC (after giving effect to any permitted extensions) (or, if such financial statements are not required to be filed with the SEC, on or before the date that is 90 days after the end of each such fiscal year), the audited consolidated balance sheet of the Borrower and the Subsidiaries as at the

end of such fiscal year and the related consolidated statements of operations, shareholders' equity and cash flows for such fiscal year, setting forth comparative consolidated figures for the preceding fiscal years (and, if more than 5% of Adjusted Consolidated Net Tangible Assets for such fiscal year is attributable to Unrestricted Subsidiaries, a reasonably detailed reconciliation, reflecting such financial information for the Borrower and the Restricted Subsidiaries, on the one hand, and the Borrower and the Subsidiaries, on the other hand, for such fiscal year**)**, all in reasonable detail and prepared in accordance with GAAP and, except with respect to such reconciliation, certified by independent certified public accountants of recognized national standing whose opinion shall not be materially qualified with a "going concern" or like qualification or exception (other than with respect to, or resulting from, (i) the occurrence of the Tranche A Termination Date or the Tranche B Maturity Date, as applicable, within one year from the date such opinion is delivered or (ii) any potential inability to satisfy the Financial Performance Covenants on a future date or in a future period).

(b) Quarterly Financial Statements. As soon as available and in any event within five Business Days after the date on which such financial statements are required to be filed with the SEC (after giving effect to any permitted extensions) with respect to each of the first three quarterly accounting periods in each fiscal year of the Borrower (or, if such financial statements are not required to be filed with the SEC, on or before the date that is 60 days after the end of each such quarterly accounting period), the consolidated balance sheet of the Borrower and the Subsidiaries as at the end of such quarterly period and the related consolidated statements of operations, shareholders' equity and cash flows for such quarterly accounting period and for the elapsed portion of the fiscal year ended with the last day of such quarterly period, and setting forth comparative consolidated figures for the related periods in the prior fiscal year or, in the case of such consolidated balance sheet, for the last day of the prior fiscal year (and, if more than 5% of Adjusted Consolidated Net Tangible Assets for such quarterly accounting period is attributable to Unrestricted Subsidiaries, a reasonably detailed reconciliation, reflecting such financial information for the Borrower and the Restricted Subsidiaries, on the one hand, and the Borrower and the Subsidiaries, on the other hand, for such quarterly accounting period**)**, all of which shall be certified by an Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows, of the Borrower and its consolidated Subsidiaries (or, in the case of such reconciliation, the Borrower and its Restricted Subsidiaries) in accordance with GAAP, subject to changes resulting from audit and normal year-end audit adjustments and the absence of footnotes.

(c) Other Information.

(i) Promptly upon filing thereof, copies of any filings (including on Form 10-K, 10-Q or 8-K) with, and reports to, the SEC or any analogous Governmental Authority in any relevant jurisdiction by the Borrower or any Subsidiary (other than amendments to any registration statement, exhibits to any registration statement and, if applicable, any registration statements on Form S-8), (A) copies of all financial statements, proxy statements, notices and reports that the Borrower or any Subsidiary shall send to the holders of any publicly issued debt of the Borrower and/or any Subsidiary, in each case in their capacity as such holders, lenders or agents (in each case to the extent not theretofore delivered to the Administrative Agent pursuant to this Agreement) and (B) with reasonable promptness, but subject to the limitations set forth in the last sentences of Section 8.08(a) and Section 12.04, such other information (financial or

otherwise) as the Administrative Agent on its own behalf or on behalf of any Lender (acting through the Administrative Agent) may reasonably request in writing from time to time

(ii) Subject to any applicable limitations set forth in the Loan Documents, the Borrower will deliver to the Collateral Agent for filing, registration or recording all documents and instruments, including UCC or other applicable personal property and financing statements (A) required to satisfy the Collateral Requirements and (B) otherwise reasonably requested by the Collateral Agent or the Administrative Agent to be filed, registered or recorded to create or continue, as applicable, the Liens intended to be created by any Security Instrument and perfect such Liens to the extent required by, and with the priority required by, such Security Instrument to the Collateral Agent and none of the Collateral shall be subject to any other pledges, security interests or mortgages, except for Liens permitted under Section 9.03.

(iii) Promptly following any request therefor, (i) such other information regarding the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of the Borrower or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender (through the Administrative Agent) may from time to time reasonably request in writing or (ii) information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" requirements under the PATRIOT Act or other applicable anti-money laundering laws.

Documents required to be delivered pursuant to Sections 8.01(a), (b) and (c) may be delivered electronically and, if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 12.01, (ii) on which such documents are transmitted by electronic mail to the Administrative Agent or (iii) on which such documents are filed of record with the SEC. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of such documents from the Administrative Agent and maintaining its copies of such documents.

(d) Officer's Certificates. At the time of the delivery of the financial statements provided for in Sections 8.01(a) and (b), a certificate of a Responsible Officer of the Borrower to the effect that no Default or Event of Default exists or, if any Default or Event of Default does exist, specifying the nature and extent thereof, which certificate shall set forth (i) the calculations required to establish whether the Borrower and its Restricted Subsidiaries were in compliance with the Financial Performance Covenants (other than the Consolidated Secured Indebtedness Coverage Ratio) as at the end of such fiscal year or period, as the case may be, (ii) a specification of any change in the identity of the Restricted Subsidiaries, Material Subsidiaries, Guarantors and Unrestricted Subsidiaries as at the end of such fiscal year or period, as the case may be, from the Restricted Subsidiaries, Material Subsidiaries, Guarantors and Unrestricted Subsidiaries, respectively, provided to the Lenders on the Effective Date or the most recent fiscal year or period, as the case may be, (iii) change in (w) the jurisdiction in which the Borrower or any Restricted Subsidiary is incorporated, formed, or otherwise organized, (x) the location of the Borrower's or any Restricted Subsidiary's chief executive office, (y) the Borrower's or any Guarantor's identity or corporate, limited liability or partnership structure, or (z) the Borrower's or any Restricted Subsidiary's organizational identification number in such jurisdiction of organization or federal

taxpayer identification number, (iv) reasonably detailed calculations demonstrating compliance with Section 8.19 and with Section 9.18, (v) at the time of the delivery of the financial statements provided for in Section 8.01(a), reasonably detailed calculations demonstrating the value of Adjusted Consolidated Net Tangible Assets, Free Cash Flow and Distributable Free Cash Flow, as applicable, of as the last day of the relevant period; *provided that* the first delivery of the calculations demonstrating the value of Adjusted Consolidated Net Tangible Assets, Free Cash Flow and Distributable Free Cash Flow shall not be required to be delivered at the time of the first delivery of the financial statements provided for in Section 8.01(a) and shall instead be delivered at the time of the first delivery of the financial statements provided for in Section 8.01(b).

(e) Production Report and Lease Operating Statements. At the time of the delivery of the certificate required under Section 8.12(d), a report setting forth, for each calendar month during the then-current fiscal year to date, the volume of production for each such calendar month from the Borrowing Base Properties, and setting forth the related ad valorem, severance and production taxes and lease operating expenses attributable thereto and incurred for each such calendar month, substantially in the form of such report provided by the Borrower in the DIP Credit Agreement.

(f) Issuance and Incurrence of Indebtedness. Within three (3) Business Days (or such shorter period as the Administrative Agent may agree in its sole discretion) prior to incurrence thereof, written notice of the incurrence by the Borrower or any Restricted Subsidiary of any Indebtedness (to the extent constituting Material Indebtedness), any Permitted Refinancing Indebtedness in respect thereof or any Material Indebtedness, as well as the amount thereof, the proposed closing date and the then-current draft of definitive documentation for the foregoing and any other related information reasonably requested by the Administrative Agent (to the extent permitted by, and subject to, the confidentiality provisions thereof).

(g) Opening of Accounts. Promptly, but in any event, within ten (10) Business Days (or such longer period as the Administrative Agent may agree in its sole discretion) after the opening thereof, written notice (such notice to include reasonably detailed information regarding the account number, purpose and applicable bank or other institution in respect of such Deposit Account, Commodities Account or Securities Account) to the Administrative Agent of any Deposit Account, Commodities Account or Securities Account (other than an Excluded Account) opened by the Borrower or any other Credit Party.

Documents required to be delivered pursuant to Section 8.01(a), (b), (c)(i) and (f) may be delivered electronically and shall be deemed to have been so delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's public website or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website (including the SEC's EDGAR website), if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent).

The Administrative Agent may make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Company Materials") by posting the Company Materials on an Approved Electronic Platform. The Borrower hereby acknowledges that certain of the Lenders may from time to time elect to be "public-side" Lenders

(*i.e.*, Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a "Public Lender") and the Borrower hereby agrees that (w) all Company Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof, (x) by marking Company Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Company Materials as either publicly available information or not material information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws, (y) all Company Materials marked "PUBLIC" are permitted to be made available through a portion of the Approved Electronic Platform designated "Public Investor" and (z) the Administrative Agent shall be entitled to treat Company Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Approved Electronic Platform not designated "Public Investor."

Section 8.02 **Notices of Material Events**. In addition to the notices required under Section 8.01, the Borrower will furnish to the Administrative Agent (which shall promptly make such information available to each Lender) notice of the following:

(a) Notice of Default; Litigation. Promptly (and in the case of clause (i) below, in any event within five (5) Business Days after a Responsible Officer of the Borrower obtains actual knowledge thereof), notice of (i) the occurrence of any event that constitutes a Default or Event of Default, which notice shall specify the nature thereof, the period of existence thereof and what action the Borrower proposes to take with respect thereto and (ii) any litigation or governmental proceeding pending against the Borrower or any Subsidiary for which it would reasonably be expected that an adverse determination is probable, and that such determination would result in a Material Adverse Effect.

(b) Environmental Matters. Promptly, and in any event within fifteen (15) Business Days after a Responsible Officer of the Borrower obtains written notice from any Governmental Authority of any one or more of the following environmental matters (or by such later date as the Administrative Agent may agree in its sole discretion), unless such environmental matters would not, individually, or when aggregated with all other such matters, be reasonably expected to result in a Material Adverse Effect, notice of:

(i) any condition or occurrence on any Oil and Gas Properties of any Credit Party that would reasonably be expected to result in noncompliance by any Credit Party with any applicable Environmental Law;

(ii) any condition or occurrence on any Oil and Gas Properties that would reasonably be anticipated to cause such Oil and Gas Properties to be subject to any restrictions on the ownership, occupancy, use or transferability of such Oil and Gas Properties under any Environmental Law; and

(iii) the conduct of any investigation, or any removal, remedial or other corrective action in response to the actual or alleged presence, Release or threatened Release of any Hazardous Material on, at, under or from any Oil and Gas Properties.

All such notices delivered under this Section 8.02 shall describe in reasonable detail the nature of the claim, investigation, condition, occurrence or removal or remedial action and the response thereto.

(c) Change in Beneficial Ownership Certification. Upon knowledge of any Responsible Officer of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in parts (c) or (d) of such certification, the Borrower will promptly notify the Administrative Agent and each Lender, but in any event within ten (10) Business Days, of any change in such information (or by such later date as the Administrative Agent may agree in its sole discretion).

Section 8.03 **Existence**. The Borrower will do, and will cause each Restricted Subsidiary to do, or cause to be done, all things necessary to preserve and keep in full force and effect its legal existence, corporate (or equivalent) rights and authority, except to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect; but the Borrower and its Restricted Subsidiaries may consummate any transaction permitted under Sections 9.06, 9.09 or 9.10. The Borrower will, and will cause each Restricted Subsidiary to maintain its legal existence in Delaware, another State within the United States of America or the District of Columbia.

Section 8.04 **Payment of Taxes**. After giving effect to the Confirmation Order and the Plan of Reorganization, the Borrower will pay and discharge, and will cause each of the Restricted Subsidiaries to pay and discharge, all Taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits, or upon any properties belonging to it, before the date on which material penalties attach thereto, and all lawful material claims in respect of any Taxes imposed, assessed or levied that, if unpaid, would reasonably be expected to become a material Lien upon any properties of the Borrower or any Restricted Subsidiary; but neither the Borrower nor any Restricted Subsidiary shall be required to pay or discharge any such Tax, assessment, charge, levy or claim that is being contested in good faith and by proper proceedings if it has maintained adequate reserves (in the good faith judgment of management of the Borrower) with respect thereto to the extent required by, and in accordance with, GAAP or the failure to pay or discharge would not reasonably be expected to result in a Material Adverse Effect.

Section 8.05 **Performance of Obligations under Loan Documents**. The Borrower will pay the Loans in accordance with the terms hereof, and the Borrower will, and will cause each Restricted Subsidiary to, do and perform every act and discharge all of the obligations to be performed and discharged by them under the Loan Documents.

Section 8.06 **Maintenance of Properties**. The Borrower will, and will cause each of the Restricted Subsidiaries to, except in each case where the failure to so comply or cause would not reasonably be expected to result in a Material Adverse Effect:

(a) operate its Oil and Gas Properties and other material properties or cause such Oil and Gas Properties and other material properties to be operated in a careful and efficient manner in accordance with the practices of the industry and in compliance with all applicable Contractual Requirements and all applicable Requirements of Law, including applicable proration requirements and applicable Environmental Laws, and all applicable Requirements of Law of every other Governmental Authority from time to time constituted to regulate the development

and operation of its Oil and Gas Properties and the production and sale of Hydrocarbons and other minerals therefrom;

(b) keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear and depletion excepted, and preserve, maintain and keep in good repair, working order and efficiency (ordinary wear and tear and depletion excepted) all of its material Oil and Gas Properties and other material properties, including all equipment, machinery and facilities; and

(c) to the extent a Credit Party is not the operator of any property, the Borrower shall use reasonable efforts to cause the operator to comply with this Section, but failure of the operator to so comply will not constitute a Default or an Event of Default hereunder.

Section 8.07 **Insurance**.

(a) The Borrower will, and will cause each Restricted Subsidiary to, at all times maintain in full force and effect, pursuant to self-insurance arrangements or with insurance companies that the Borrower believes (in the good faith judgment of the management of the Borrower) are financially sound and responsible at the time the relevant coverage is placed or renewed, insurance in at least such amounts (after giving effect to any self-insurance which the Borrower believes (in the good faith judgment of management of the Borrower) is reasonable and prudent in light of the size and nature of its business) and against at least such risks (and with such risk retentions) as the Borrower believes (in the good faith judgment of management of the Borrower) is reasonable and prudent in light of the size and nature of its business; and will furnish to the Collateral Agent, upon written request from the Collateral Agent or the Administrative Agent, information presented in reasonable detail as to the insurance so carried.

(b) The Secured Parties shall be the additional insureds on any such liability insurance as their interests may appear and, if property insurance is obtained, the Collateral Agent shall be the additional loss payee under any such property insurance; but, so long as no Event of Default has occurred and is then continuing, the Secured Parties will provide any proceeds of such property insurance to the Borrower to the extent that the Borrower undertakes to apply such proceeds to the reconstruction, replacement or repair of the property insured thereby. The Borrower shall use commercially reasonable efforts to ensure that all policies of insurance required by the terms of this Agreement or any Security Instrument shall provide that each insurer shall endeavor to give at least 30 days' prior written notice to the Collateral Agent of any cancellation of such insurance (or at least 10 days' prior written notice in the case of cancellation of such insurance due to non-payment of premiums).

Section 8.08 **Books and Records; Inspection Rights**.

(a) The Borrower will, and will cause each Restricted Subsidiary to, permit officers and designated representatives of the Administrative Agent or the Majority Lenders (as accompanied by the Administrative Agent) to visit and inspect any property or asset of the Borrower or such Subsidiary in whosoever's possession to the extent that it is within such party's control to permit such inspection (and shall use commercially reasonable efforts to cause such inspection to be permitted to the extent that it is not within such party's control to permit such

inspection), and to examine the books and records of the Borrower and any such Restricted Subsidiary and discuss the affairs, finances and accounts of the Borrower and of any such Restricted Subsidiary with, and be advised as to the same by, its and their officers and independent accountants, upon reasonable advance notice to the Borrower, all at such reasonable times and intervals during normal business hours and to such reasonable extent as the Administrative Agent or the Majority Lenders may desire (and subject, in the case of any such meetings or advice from such independent accountants, to such accountants' customary policies and procedures); but, excluding any such visits and inspections during the continuation of an Event of Default (i) only the Administrative Agent on behalf of the Majority Lenders may exercise rights of the Administrative Agent and the Lenders under this Section, and (ii) only one such visit shall be at the Borrower's expense; provided, further, that when an Event of Default exists, the Administrative Agent (or any of its representatives or independent contractors) or any representative of the Majority Lenders may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent and the Majority Lenders shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. Notwithstanding anything to the contrary contained herein, neither the Borrower nor any Restricted Subsidiary will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by any Requirement of Law or any binding agreement or (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product.

(b) The Borrower will, and will cause each of the Restricted Subsidiaries to, maintain proper books of record and account, in which entries that are full, true and correct in all material respects and are in conformity with GAAP consistently applied (subject to the impact of fresh start accounting) shall be made of all material financial transactions and matters involving the assets and business of the Borrower or such Restricted Subsidiary, as the case may be.

Section 8.09 **Compliance with Laws**. The Borrower will, and will cause each Restricted Subsidiary to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its Property, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. The Borrower will maintain in effect and enforce policies and procedures regarding compliance by the Borrower, its Subsidiaries and each of their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

Section 8.10 **Environmental Matters**.

(a) Each of the Borrower will at its sole expense: (i) comply, and cause its Properties and operations and each Subsidiary and each Subsidiary's Properties and operations to comply, with all applicable Environmental Laws, to the extent the breach thereof would be reasonably expected to have a Material Adverse Effect; (ii) not Release or threaten to Release, and cause each Subsidiary not to Release or threaten to Release, any Hazardous Material on, under, about or from any of the Borrower's or its Subsidiaries' Properties or any other property offsite the Property to the extent caused by the Borrower's or any of its Subsidiaries' operations except

in compliance with applicable Environmental Laws, to the extent such Release or threatened Release would reasonably be expected to have a Material Adverse Effect; (iii) timely obtain or file, and cause each Subsidiary to timely obtain or file, all Environmental Permits, if any, required under applicable Environmental Laws to be obtained or filed in connection with the operation or use of the Borrower's or its Subsidiaries' Properties, to the extent such failure to obtain or file would reasonably be expected to have a Material Adverse Effect; (iv) promptly commence and diligently prosecute to completion, and cause each Subsidiary to promptly commence and diligently prosecute to completion, any assessment, evaluation, investigation, monitoring, containment, cleanup, removal, repair, restoration, remediation or other remedial obligations (collectively, the "Remedial Work") in the event any Remedial Work is required of the Borrower or any Subsidiary under applicable Environmental Laws because of or in connection with the actual or suspected Release or threatened Release of any Hazardous Material on, under, about or from any of the Borrower's or its Subsidiaries' Properties, to the extent failure to do so would reasonably be expected to have a Material Adverse Effect; and (v) conduct, and cause its Subsidiaries to conduct, their respective operations and businesses in a manner that will not unreasonably expose any Property or Person to Hazardous Materials that would reasonably be expected to cause the Borrower or its Subsidiaries to owe damages or compensation pursuant to applicable Environmental Laws that would reasonably be expected to cause a Material Adverse Effect.

(b) If the Borrower or any Restricted Subsidiary receives written notice of any action or, investigation or inquiry by any Governmental Authority or any threatened demand or lawsuit by any Person against the Borrower or its Restricted Subsidiaries or their Properties, in each case in connection with any Environmental Laws, the Borrower will within fifteen (15) days after any Responsible Officer obtains actual knowledge thereof give written notice of the same to Administrative Agent if such action, investigation, inquiry, demand or lawsuit would reasonably be expected to cause a Material Adverse Effect.

(c) In connection with any acquisition by the Borrower or any Restricted Subsidiary of any Oil and Gas Property, other than an acquisition of additional interests in Oil and Gas Properties in which the Borrower or any Restricted Subsidiary previously held an interest, to the extent the Borrower or such Restricted Subsidiary obtains or is provided with same, the Borrower will, and will cause each Restricted Subsidiary to, promptly following the Borrower's or such Restricted Subsidiary's obtaining or being provided with the same, deliver to the Administrative Agent such final and non-privileged material environmental reports of such Oil and Gas Properties as are (and to the extent) reasonably requested by the Administrative Agent.

Section 8.11 **Further Assurances**.

(a) Subject to the applicable limitations set forth in Section 8.14 and the Security Instruments, the Borrower at its sole expense will, and will cause each Restricted Subsidiary to, promptly execute and deliver to the Administrative Agent or the Collateral Agent, as applicable, all such other documents, agreements and instruments reasonably requested by the Administrative Agent or the Collateral Agent, as applicable, to comply with, cure any defects or accomplish the conditions precedent, covenants and agreements of the Borrower or any Restricted Subsidiary, as the case may be, in the Loan Documents, including the Notes, or to further evidence and more fully describe the collateral intended as security for the Obligations (including exhibits

to Security Instruments (which shall be in recordable form for the applicable jurisdiction) and any other information reasonably requested in connection with the identification of any Collateral), or to correct any omissions in this Agreement or the Security Instruments, or to state more fully the obligations secured therein, or to perfect, protect or preserve any Liens created or intended to be created pursuant to this Agreement or any of the Security Instruments or the priority thereof, or to make any recordings, file any notices or obtain any consents that may be reasonably necessary or appropriate in connection therewith, or to take all such further actions to may be required under any applicable Requirements of Law.

(b) The Borrower hereby authorizes the Collateral Agent (or its designee) to file one or more financing or continuation statements, and amendments thereto, describing all or any part of the Collateral without the signature of the Borrower or any Guarantor where permitted by law. A carbon, photographic or other reproduction of the Security Instruments or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by law. The Borrower acknowledges and agrees that any such financing statement may describe the collateral as "all assets" of the applicable Credit Party or words of similar effect as may be required by the Collateral Agent.

Section 8.12 **Reserve Reports**.

(a) In addition to the Initial Reserve Report which has been delivered on or prior to the Effective Date, on or before each date set out in the "Delivery Date" column of the following table, the Borrower shall furnish to the Administrative Agent and the Lenders (i) a Reserve Report evaluating the Oil and Gas Properties of the Borrower and the Guarantors (other than VPP Properties) constituting Proved Reserves and located within the geographic boundaries of the United States of America (or the Outer Continental Shelf adjacent to the United States of America) (other than Oil and Gas Properties that are uneconomic based upon the pricing assumptions consistent with the most recent Bank Price Deck provided by the Administrative Agent to the Borrower) as of the date set out in the same line in the "As-of Date" column of such table and (ii) a Swap Schedule of the Credit Parties:

As-of Date	**Delivery Date**
July 1, 2021	September 1, 2021
January 1, 2022 and each January 1 thereafter	the next following April 1
July 1, 2022 and each July 1 thereafter	the next following October 1

(b) The Reserve Reports as of January 1 of each year shall be prepared by one or more Approved Petroleum Engineers with respect to at least 80% of the aggregate volumes of the Borrowing Base Properties, with the balance prepared by or under the supervision of the Borrower's chief engineer, and the Reserve Reports as of July 1 of each year or any Reserve Reports delivered in connection with any Interim Redeterminations shall be prepared at the Borrower's option, either by Approved Petroleum Engineers (with respect to at least 80% of the aggregate volumes of the Borrowing Base Properties) or by the internal reserve engineering staff of the Borrower, *provided* that if the July 1 Reserve Report is prepared by the internal reserve engineering staff of the Borrower, such Reserve Report shall be (i) certified by the chief engineer of the Borrower as true and accurate in all material respects and (ii) prepared in accordance with the procedures used in the immediately preceding January 1 Reserve Report.

(c) In the event of an Interim Redetermination, the Borrower shall furnish to the Administrative Agent and the Lenders (i) a Reserve Report prepared either by Approved Petroleum Engineers or by the Borrower's chief engineer, in each case in accordance with the procedures used in the immediately preceding January 1 Reserve Report and (ii) a Swap Schedule. For any Interim Redetermination requested by the Administrative Agent or the Borrower pursuant to Section 2.07(b), the Borrower shall provide such Reserve Report with an "as of" date as required by the Administrative Agent and such Swap Schedule, in each case, as soon as possible, but in any event no later than thirty (30) days following the receipt of such request.

(d) With the delivery of each Reserve Report (other than the Initial Reserve Report), the Borrower shall provide to the Administrative Agent and the Lenders a certificate from a Responsible Officer on behalf of the Borrower certifying that in all material respects (i) the information contained in the Reserve Report and any other information delivered in connection therewith is true and correct in all material respects, (ii) the Borrower or its Restricted Subsidiaries owns good and defensible title to the Oil and Gas Properties evaluated in such Reserve Report and such Properties are free of all Liens except for Permitted Liens, (iii) except as set forth on an exhibit to the certificate, on a net basis there are no gas imbalances, take or pay or other prepayments in excess of the volume specified in Section 7.18 with respect to its Oil and Gas Properties evaluated in such Reserve Report which would require the Borrower or any of its Restricted Subsidiaries to deliver Hydrocarbons either generally or produced from such Oil and Gas Properties at some future time without then or thereafter receiving full payment therefor, (iv) none of the Borrowing Base Properties have been sold since the date of the last Borrowing Base determination except as set forth on an exhibit to the certificate, which certificate shall list all such Borrowing Base Properties sold, (v) since filing the Borrower's most recent Form 10-K, the Borrower and its Restricted Subsidiaries have not engaged in marketing activities for any Hydrocarbons or entered into any contracts related thereto other than such marketing activities materially consistent with those described in the most recently filed Form 10-K filing of the Borrower, unless any such marketing activities would rise to the materiality thresholds required to be disclosed on the next Form 10-K filing of the Borrower, in which case, such activities will be described on an exhibit to the certificate and (vi) in the case of any Reserve Report delivered pursuant to Section 8.12(a), if Other Secured Debt was outstanding as of the applicable Coverage Ratio Test Date, setting forth the calculations required to establish whether the Borrower and its Restricted Subsidiaries were in compliance with the Consolidated Secured Indebtedness Coverage Ratio as of the most recent Coverage Ratio Test Date.

(e) Contemporaneously with the delivery of each Swap Schedule while any Forecasted Production Swap Agreement is outstanding, and as more frequently as the Borrower may elect, the Borrower shall furnish to the Administrative Agent a Forecasted Production Report.

Section 8.13 **Title Information**.

(a) No later than thirty (30) days after the delivery to the Administrative Agent and the Lenders of each Reserve Report required by Section 8.12(a), the Borrower shall, if applicable, deliver title information in form and substance acceptable to the Administrative Agent covering enough of the Oil and Gas Properties of the Borrower and the Guarantors evaluated by such Reserve Report, so that the Administrative Agent shall have received, together with title information previously delivered to the Administrative Agent, satisfactory title information on at

least 85% of the total PV-10 of the Borrowing Base Properties of the Borrower and the Guarantors evaluated by such Reserve Report.

(b) If the Borrower has provided title information for additional Oil and Gas Properties under Section 8.13(a), the Borrower shall, within sixty (60) days of notice from the Administrative Agent that title defects or exceptions exist with respect to such additional Oil and Gas Properties (or such longer period as the Administrative Agent may approve in its sole discretion), either (i) cure any such title defects or exceptions (including defects or exceptions as to priority) which are not permitted by Section 9.03 raised by such information, (ii) substitute acceptable Mortgaged Properties with no title defects or exceptions having an equivalent or greater value or (iii) deliver title information in form and substance reasonably acceptable to the Administrative Agent so that the Administrative Agent shall have received, together with title information previously delivered to the Administrative Agent, reasonably satisfactory title information on at least 85% of the PV-10 of the Borrowing Base Properties of the Borrower and the Guarantors evaluated by such Reserve Report.

(c) If the Borrower is unable to cure any title defect requested by the Administrative Agent to be cured within the 60-day period of time required by clause (b) above (as may be extended) or the Borrower does not comply with the requirements to provide acceptable title information covering at least 85% of the PV-10 of the Borrowing Base Properties of the Borrower and the Guarantors evaluated in the most recent Reserve Report within such 60-day period (as may be extended), such failure shall not be a Default, but instead the Administrative Agent may send a notice to the Borrower and the Lenders that the then outstanding Borrowing Base shall be reduced by an amount as determined by the Required Lenders (which amount may be proposed by the Administrative Agent) to cause the Borrower to be in compliance with the requirement to provide reasonably acceptable title information covering at least 85% of the PV-10 of the Borrowing Base Properties evaluated by such Reserve Report and any Mortgaged Property with unacceptable title shall not count towards the mortgage requirement in Section 8.14(a) effective beginning as of the next date compliance is required to be tested under Section 8.14(a) unless such defect is cured. This new Borrowing Base shall become effective immediately after receipt of such notice.

Section 8.14 **Additional Guarantors, Grantors and Collateral**.

(a) In connection with each redetermination of the Borrowing Base following the Effective Date, the Borrower shall review the Reserve Report and the list of current Mortgaged Properties (as described in Section 8.12(d)) to ascertain whether the Mortgaged Properties represent at least 90% of the total PV-10 of the Borrowing Base Properties of the Borrower and the Guarantors evaluated by such Reserve Report, after giving effect to exploration and production activities, acquisitions, Dispositions and production. In the event that the Mortgaged Properties do not satisfy the foregoing requirements, then the Borrower shall, and shall cause its Restricted Subsidiaries to, promptly grant, within thirty (30) days (or such later date as the Administrative Agent may agree in its sole discretion, but in any event no later than the date that is sixty (60) days after delivery of the certificate required under Section 8.12(d)) after delivery of the certificate required under Section 8.12(d), to the Collateral Agent, as security for the Obligations, Security Instruments covering additional Borrowing Base Properties not already subject to a Lien of the Security Instruments such that after giving effect thereto, the Mortgaged Properties will comply

with such requirements. All such Liens will be created and perfected by and in accordance with the provisions of deeds of trust, mortgages, security agreements and financing statements or other Security Instruments, all in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Agent and in sufficient executed (and acknowledged where necessary or appropriate) counterparts for recording purposes. In order to comply with the foregoing, if any Restricted Subsidiary places a Lien on its Oil and Gas Properties for the benefit of the Collateral Agent and such Restricted Subsidiary is not a Guarantor, then, it shall become a Guarantor and comply with Section 8.14(b).

(b) The Borrower shall promptly cause (x) each direct or indirect Subsidiary (other than Excluded Subsidiaries) and (y) each direct or indirect Subsidiary that ceases to be an Excluded Subsidiary, in each case, to guarantee the Obligations pursuant to the Guaranty and Collateral Agreement. In connection with any such guaranty, the Borrower shall, or shall cause such Subsidiary to, promptly, but in any event no later than thirty (30) days (as may be extended by the Administrative Agent in its sole discretion but in any event no later than the date that is sixty (60) days after delivery of the certificate required under Section 8.12(d)) the formation or acquisition (or other similar event) of such Subsidiary, or the date such Subsidiary ceases to be an Excluded Subsidiary, to (i) execute and deliver a supplement to the Guaranty and Collateral Agreement, executed by such Subsidiary, (ii) pledge all of the Stock of such Subsidiary that are owned by the Borrower or any Guarantor (and deliver the original stock certificates, if any, evidencing the Stock of such Subsidiary, together with an appropriate undated stock power for each certificate duly executed in blank by the registered owner thereof), (iii) grant Liens in favor of the Collateral Agent on all Property of such Subsidiary (other than Property excluded from the grant of such Liens pursuant to the terms of the Security Instruments) and (iv) execute and deliver such other additional closing documents, certificates and legal opinions as shall reasonably be requested by the Administrative Agent or the Collateral Agent. It is agreed and understood that the Borrower may (in its sole discretion) cause any Subsidiary to become a Guarantor and to execute and deliver the Guaranty and Collateral Agreement (or a supplement to such document).

(c) The Borrower shall cause all Borrowing Base Properties to at all times be owned by the Borrower or a Wholly-Owned Subsidiary until Disposed of in a transaction permitted hereunder.

(d) Notwithstanding any provision in any of the Loan Documents to the contrary, (i) in no event is any Building (as defined in the applicable Flood Insurance Regulations) or Manufactured (Mobile) Home (as defined in the applicable Flood Insurance Regulations) owned by the Borrower or any other Credit Party required to be included in the Mortgaged Property and no Building or Manufactured (Mobile) Home shall be encumbered by any Security Instrument; provided, that the Borrower's and the other Credit Parties' interests in all lands and Hydrocarbons situated under any such Building or Manufactured (Mobile) Home shall not be excluded from the Mortgaged Property and shall be encumbered by all applicable Security Instruments and (ii) no Foreign Subsidiary shall be required to be a Guarantor.

Section 8.15 **Unrestricted Subsidiaries**. The Borrower:

(a) will cause the management, business and affairs of each of the Borrower, the Restricted Subsidiaries and the Unrestricted Subsidiaries to be conducted in such a manner

(including, without limitation, by keeping separate books of account, furnishing separate financial statements of Unrestricted Subsidiaries to creditors and potential creditors thereof and by not permitting Properties of the Borrower and the Restricted Subsidiaries to be commingled) so that each Unrestricted Subsidiary that is a corporation will be treated as a corporate entity separate and distinct from the Borrower and the Restricted Subsidiaries;

(b) will not, and will not permit any of the Restricted Subsidiaries to, incur, assume, guarantee or be or become liable for any Indebtedness of any of the Unrestricted Subsidiaries; and

(c) will not permit any Unrestricted Subsidiary to hold any Stock in, or any Indebtedness of, the Borrower or any Restricted Subsidiary.

Section 8.16 **Commodity Exchange Act Keepwell Provisions**. The Borrower hereby absolutely, unconditionally and irrevocably undertakes to provide to each Credit Party (other than the Borrower) such funds or other support as may be needed from time to time by such Credit Party in order for such Credit Party to honor its Obligations with respect to any Swap Agreements or CFTC Hedging Obligations for which it is liable, whether such Swap Agreements or CFTC Hedging Obligations are entered into directly by such Credit Party or are guaranteed under the Guaranty and Collateral Agreement (*provided*, *however*, that the Borrower shall only be liable under this Section 8.16 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 8.16, or otherwise under this Agreement or any Loan Document, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of the Borrower under this Section 8.16 shall remain in full force and effect until this Agreement is terminated in accordance with its terms. Borrower intends that this Section 8.16 constitute a "keepwell, support, or other agreement" for the benefit of each other Credit Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

Section 8.17 **Use of Proceeds and Letters of Credit**.

(a) The Borrower will use the proceeds of the Loans (i) to fund a portion of the Transactions, including to pay Transaction Expenses, (ii) to make Restricted Payments permitted to be made hereunder, (iii) to finance the acquisition, development and exploration of Oil and Gas Properties, (iv) to redeem, defease, prepay or repay Indebtedness permitted to be incurred hereunder, including any fees, premiums and expenses associated therewith and (v) for working capital, capital expenditures and other general corporate purposes of the Borrower and its Restricted Subsidiaries.

(b) The Borrower will use Letters of Credit for general corporate purposes and to support deposits required under purchase agreements pursuant to which the Borrower or its Subsidiaries may acquire Oil and Gas Properties and other assets.

(c) The Borrower shall not request any Borrowing or Letter of Credit, and the Borrower shall not use, and shall procure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use the proceeds of any Borrowing or Letter of Credit (i) in furtherance of an offer, a payment, a promise to pay, or an authorization of the payment or

giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, in violation of applicable Sanctions or (iii) in any manner that would result in the violation of any applicable Sanctions by the Borrower or any of its Subsidiaries. The Borrower shall, and shall cause each Subsidiary to, maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower and its directors, officers, employees and agents with Anti-Corruption Laws.

Section 8.18 **Deposit Accounts, Commodities Accounts and Securities Accounts; Location of Proceeds of Loans**.

(a) Subject to Section 8.20(b), the Borrower will, and will cause each other Credit Party to, cause each of their respective Deposit Accounts, Commodities Accounts or Securities Accounts (in each case, other than Excluded Accounts) to, within 10 Business Days (or such later date as the Administrative Agent may agree in its sole discretion) following the opening or acquisition of any such account, at all times be subject to an Account Control Agreement in accordance with and to the extent required by the Guaranty and Collateral Agreement.

(b) Subject to Section 8.20(b), the Borrower will, and will cause each other Credit Party to, until the proceeds of any Loans are transferred to a third party in a transaction not prohibited by the Loan Documents, hold the proceeds of any Loans made under this Agreement in a Deposit Account and/or a Securities Account that is subject to an Account Control Agreement (unless such proceeds are transferred to an Excluded Account described in clauses (c) through (f) of the definition thereof to be used exclusively for the purposes described therein).

Section 8.19 **Swap Agreements**. The Borrower and its Restricted Subsidiaries shall have entered into, and thereafter maintain, as of the Effective Date and the last day of each fiscal quarter of the Borrower thereafter (*provided* that the Administrative Agent may extend any such date of compliance by up to thirty (30) days in its sole discretion), Swap Agreements with one or more Approved Counterparties that have notional volumes of not less than (a) on the Effective Date, 80% of the projected production of (i) oil and (ii) natural gas liquids and natural gas (taken together), in each case, from the Borrower's and its Restricted Subsidiaries' total Proved Developed Producing Reserves (based on the Reserve Report most recently delivered to the Administrative Agent), calculated separately, for the 12-month period following the Effective Date and 65% of the projected production of (i) oil and (ii) natural gas liquids and natural gas (taken together), in each case, from the Borrower's and its Restricted Subsidiaries' total Proved Developed Producing Reserves (based on the Reserve Report most recently delivered to the Administrative Agent), calculated separately, for months 13 through 24 following the Effective Date, and (b) on the last day of each fiscal quarter on a rolling basis, 50% of the projected production of (i) oil and (ii) natural gas liquids and natural gas (taken together), in each case, from the Borrower's and its Restricted Subsidiaries' total Proved Developed Producing Reserves (based on the Reserve Report most recently delivered to the Administrative Agent), calculated separately, for the 24-month period succeeding thereafter (clauses (a) and (b), collectively, the "Required Swaps") (it being understood and agreed that compliance with this Section 8.19 shall be determined in accordance with the Ten-Year Strip Price); *provided*, that solely to the extent the Borrower and its Restricted Subsidiaries are unable to enter into and thereafter maintain the Required Swaps as of the last day of any fiscal quarter after the use of commercially reasonable

efforts to do so (as determined by the Borrower in good faith), the Borrower and its Restricted Subsidiaries shall be required to enter into the Required Swaps no later than the date that is thirty (30) days after such fiscal quarter end (or such later date as the Administrative Agent may agree in its sole discretion) (the "Extended Hedge Deadline"); *provided*, *further*, that if the Borrower reasonably determines in good faith that, after working in good faith with the applicable Approved Counterparties, such Approved Counterparties have insufficient aggregate capacity or are unwilling or otherwise fail or refuse to enter into the Required Swaps with one or more Credit Parties on commercially reasonable terms substantially consistent with terms available to other similarly situated borrowers under reserve-based revolving credit facilities in the oil and gas industry by the Extended Hedge Deadline (the "Hedge Availability Shortfall Event"), then on and after the Extended Hedge Deadline, the minimum percentages specified in the definition "Required Swaps" shall be reduced for purposes of compliance with this Section 8.19 solely to the extent necessary to reflect the maximum volumes for which such Approved Counterparties have sufficient aggregate capacity, willingness or otherwise agree to enter into with respect to such Required Swaps (as determined by the Borrower in good faith); *provided*, that the reduction of such minimum percentages described in the immediately preceding proviso shall automatically terminate, and such immediately preceding proviso shall be of no further force and effect during the term of this Agreement, on the first date on which the Hedge Availability Shortfall Event is no longer continuing.

Section 8.20 **Post-Effective Date Covenants**.

(a) To the extent that the Borrower and the other Credit Parties have not delivered appropriate title information required pursuant to Section 6.01(l) as of the Effective Date, within thirty (30) after the Effective Date (or such later date as the Administrative Agent may approve in its sole discretion), the Administrative Agent shall have received appropriate title information in form and substance reasonably satisfactory to the Administrative Agent setting forth the status of title to at least 85% of the PV-10 of the Borrowing Base Properties of the Borrower and the Guarantors evaluated by the Initial Reserve Report.

(b) To the extent that the Borrower and the other Credit Parties have not delivered the Account Control Agreements required pursuant to Section 6.01(g) as of the Effective Date, within ten (10) Business Days after the Effective Date (or such later date as the Administrative Agent may approve in its sole discretion), the Borrower shall, and shall cause each other Credit Party to deliver to the Collateral Agent Account Control Agreements (in each case duly executed and delivered by the relevant Credit Party and relevant depository bank) covering all Deposit Accounts and Security Accounts (other than any Excluded Accounts) existing as of the Effective Date.

(c) To the extent that the Borrower and the other Credit Parties have not delivered the insurance deliverables required pursuant to Section 6.01(i) as of the Effective Date, within ten (10) Business Days after the Effective Date (or such later date as the Administrative Agent may approve in its sole discretion), the Collateral Agent shall have received from the Borrower a certificate of insurance coverage of the Borrower and the other Credit Parties evidencing that the Borrower and the other Credit Parties are carrying insurance in accordance with Section 7.12.

ARTICLE IX
NEGATIVE COVENANTS

Until Payment in Full, the Borrower covenants and agrees with the Lenders that:

Section 9.01 **Financial Covenants**.

(a) Consolidated First Lien Net Leverage Ratio. Commencing with the fiscal quarter ending June 30, 2021, the Borrower will not permit the Consolidated First Lien Net Leverage Ratio as of the last day of any fiscal quarter to exceed 2.75 to 1.00.

(b) Consolidated Total Net Leverage Ratio. Commencing with the fiscal quarter ending June 30, 2021, the Borrower will not permit the Consolidated Total Net Leverage Ratio as of the last day of any fiscal quarter to exceed 3.50 to 1.00.

(c) Consolidated Secured Indebtedness Coverage Ratio. At any time that Other Secured Debt is outstanding as of any Coverage Ratio Test Date, the Borrower will not permit the Consolidated Secured Indebtedness Coverage Ratio as of each such Coverage Ratio Test Date to be less than 1.50 to 1.00.

(d) Current Ratio. Commencing with the fiscal quarter ending June 30, 2021, the Borrower will not permit, as of the last day of any fiscal quarter, the Current Ratio as of such date to be less than 1.0 to 1.0.

Section 9.02 **Indebtedness**. The Borrower will not, and will not permit any Restricted Subsidiary to, incur, create, assume or suffer to exist any Indebtedness, except:

(a) the Loans, any Notes and other Obligations arising under the Loan Documents;

(b) Indebtedness existing on the Effective Date and that is disclosed to the Lenders on Schedule 9.02 and any Permitted Refinancing Indebtedness issued or incurred to Refinance such Indebtedness;

(c) (i) Indebtedness (including Indebtedness arising under Capital Leases) incurred within 270 days of, or assumed in connection with, the acquisition, construction, lease, repair, replacement, expansion or improvement of fixed or capital assets to finance the acquisition, construction, lease, repair, replacement expansion, or improvement of such fixed or capital assets, (ii) Indebtedness arising under Capital Leases, other than (A) Capital Leases in effect on the Effective Date and (B) Capital Leases entered into pursuant to subclause (i) above (but, in the case of each of the foregoing subclauses (i) and (ii), the Borrower shall be in compliance on a Pro Forma Basis with the Financial Performance Covenants); and (iii) any Permitted Refinancing Indebtedness issued or incurred to Refinance any such Indebtedness;

(d) Indebtedness in respect of any bankers' acceptance, bank guarantees, letter of credit, warehouse receipt or similar facilities entered into in the ordinary course of business (including in respect of workers compensation claims, health, disability or other employee benefits

or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims);

(e) Intercompany loans and advances made by the Borrower to any Restricted Subsidiary or made by any Restricted Subsidiary to the Borrower or its Restricted Subsidiaries so long as such Indebtedness is subordinated to the Obligations on terms set forth in the Global Intercompany Note and not giving rise to material adverse tax consequences;

(f) subject to compliance with Section 9.06, Guarantee Obligations of (i) Restricted Subsidiaries in respect of Indebtedness of the Borrower or other Restricted Subsidiaries that is permitted to be incurred under this Agreement and (ii) the Borrower in respect of Indebtedness of Restricted Subsidiaries that is permitted to be incurred under this Agreement; but (A) if the Indebtedness being guaranteed under this Section 9.02(f) is subordinated to the Obligations, such Guarantee Obligations shall be subordinated to the guarantee by the Credit Parties of the Obligations in the Guaranty and Collateral Agreement on terms at least as favorable to the Lenders as those contained in the subordination of such Indebtedness and (B) no guarantee by any Restricted Subsidiary of any Permitted Additional Debt (or Indebtedness under clause (b) above) shall be permitted unless such Restricted Subsidiary shall have also provided a guarantee of the Obligations substantially on the terms set forth in the set forth in the Guaranty and Collateral Agreement;

(g) Guarantee Obligations incurred (i) in the ordinary course of business in respect of obligations of (or to) suppliers, customers, franchisees, lessors, licensees or sublicensees and (ii) otherwise constituting Investments permitted by Section 9.06;

(h) [Reserved.]

(i) Indebtedness consisting of secured financings by a Foreign Subsidiary in which no Credit Party's assets are used to secure such Indebtedness;

(j) Obligations under any Treasury Management Agreements and other Indebtedness in respect of netting services, automatic clearing house arrangements, employees' credit or purchase cards, overdraft protections and similar arrangements in each case incurred in the ordinary course of business;

(k) Indebtedness incurred in the ordinary course of business in respect of obligations of the Borrower or any Restricted Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services;

(l) Indebtedness arising from agreements of the Borrower or any Restricted Subsidiary providing for indemnification, adjustment of purchase price or similar obligations (including earn-outs), in each case entered into in connection with any acquisition or Disposition permitted hereunder;

(m) Indebtedness of the Borrower or any Restricted Subsidiary consisting of (i) obligations to pay insurance premiums on policies required by Section 8.07 or (ii) obligations contained in firm transportation or supply agreements or other take or pay contracts, in each case arising in the ordinary course of business;

(n) Indebtedness representing deferred compensation to employees, consultants or independent contractors of the Borrower (or, to the extent such work is done for the Borrower or its Subsidiaries, any direct or indirect parent thereof) and the Restricted Subsidiaries incurred in the ordinary course of business;

(o) Indebtedness to current or former officers, managers, consultants, directors and employees (or their respective spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees) to finance the purchase or redemption of Stock or Stock Equivalents of the Borrower (or any direct or indirect parent thereof) permitted by Section 9.04;

(p) Indebtedness, including the FLLO Term Loan, secured by Liens on the Collateral (A) the priority of which are subordinated to the Lien securing the Obligations under the Security Instruments or (B) which are separate from, but the priority of which are equal and ratable with, the Liens securing the Obligations and subject to an Acceptable Collateral Trust Agreement providing for payment priority of the Obligations ahead of such Indebtedness, if in each case that:

(i) at the time of, and after giving *pro forma* effect to, the incurrence of such Indebtedness, (x) no Default, Event of Default, or Borrowing Base Deficiency shall exist, and be continuing, (y) the Consolidated Total Net Leverage Ratio shall be no greater than 3.00 to 1.00 on a Pro Forma Basis and (z) the Collateral Requirements shall be satisfied; provided, that the Borrowing Base in effect on the date of issuance shall be reduced by the amount equal to 25% of the principal amount of such Indebtedness in accordance with Section 2.07(f),

(ii) (A) to the extent the terms and documentation for such Indebtedness are not substantially consistent with the corresponding Loan Documents (excluding terms as to interest rates, fees, floors, funding discounts and redemption or prepayment premiums), either (1) such terms and documentation shall be reasonably satisfactory to the Administrative Agent or (2) such terms and documentation shall either (X) not be materially more restrictive, taken as a whole, to the Borrower and its Restricted Subsidiaries, than the Loan Documents (or the Lenders receive the benefit of the more restrictive terms which, for avoidance of doubt, may be provided to them without their consent), in each case, as certified by an Responsible Officer of the Borrower in good faith or (Y) apply after the Maturity Date and (B) the Administrative Agent shall have received an opinion of special counsel to the Borrower covering such matters as the Administrative Agent shall reasonably request,

(iii) the holders of such Indebtedness or their representative will have entered into an Acceptable Intercreditor Agreement or joinder thereto and/or an Acceptable Collateral Trust Agreement or joinder thereto, as applicable,

(iv) such Indebtedness will not have scheduled amortization and will not mature by its terms before 91 days after the Maturity Date in effect at the time such Indebtedness is incurred, and

(v) the Available Borrowing Base in effect on the date of issuance shall be reduced by an amount equal to the principal amount of such Indebtedness;

and any Permitted Refinancing Indebtedness issued or incurred to refinance such Indebtedness;

(q) Indebtedness under Swap Agreements permitted pursuant to Section 8.19 and Section 9.18;

(r) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion guarantees and similar obligations not in connection with money borrowed, in each case provided in the ordinary course of business or consistent with past practice, including those incurred to secure health, safety and environmental obligations in the ordinary course of business or consistent with past practice;

(s) Indebtedness of any Restricted Subsidiary that is not a party to the Security Agreement at the time such Indebtedness is incurred; but the aggregate principal amount of Indebtedness outstanding at any time pursuant to this clause (s), together with any Permitted Refinancing Indebtedness issued or incurred to refinance such Indebtedness, shall not at the time of incurrence thereof and after giving pro forma effect thereto and the use of proceeds thereof, exceed the greater of $50,000,000 and 1.0% of the Adjusted Consolidated Net Tangible Assets (as measured at the time of incurrence; *provided*, that if any such Indebtedness is issued or incurred in reliance on Adjusted Consolidated Net Tangible Assets and any Permitted Refinancing Indebtedness issued or incurred to refinance such Indebtedness would cause the percentage of Adjusted Consolidated Net Tangible Assets (as measured at the time of incurrence) to be exceeded if calculated based on the Adjusted Consolidated Net Tangible Assets on the date of such refinancing, such percentage of Adjusted Consolidated Net Tangible Assets will not be deemed to be exceeded to the extent such Permitted Refinancing Indebtedness does not exceed the amount permitted under clause (A) of the definition of Permitted Refinancing Indebtedness);

(t) endorsements of negotiable instruments for collection in the ordinary course of business and Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business, in each case, so long as such Indebtedness is extinguished within 5 Business Days of the incurrence thereof;

(u) Indebtedness associated with bonds or surety obligations required by Requirements of Law or by Governmental Authorities in connection with the operation of Oil and Gas Properties in the ordinary course of business;

(v) Permitted Additional Debt at any time outstanding, if immediately after giving effect to the incurrence of such Indebtedness, (1) no Default or Event of Default has occurred and is continuing or would result therefrom, (2) after giving *pro forma* effect to, the incurrence of such Indebtedness, the Consolidated Total Net Leverage Ratio shall be no greater than 3.00 to 1.00 on a Pro Forma Basis, (3) the Borrower shall be in compliance on a Pro Forma Basis with the Financial Performance Covenants, and any Permitted Refinancing Indebtedness issued or incurred to refinance such Indebtedness; provided, that the Borrowing Base in effect on the date of issuance shall be reduced by the amount equal to 25% of the principal amount of such Indebtedness (other than Permitted Refinancing Indebtedness) in accordance with Section 2.07(f);

(w) all premiums (if any), interest (including post-petition interest), fees, expenses, charges, and additional or contingent interest on obligations described in the other clauses of this Section 9.02;

(x) Indebtedness constituting a Real Estate Financing;

(y) Indebtedness of a Person or Indebtedness attaching to the assets of Person that, in either case, becomes a Restricted Subsidiary (or is a Restricted Subsidiary that survives a merger with such Person or any of its Subsidiaries) and becomes a Guarantor in accordance with the time periods set forth in Section 8.14 (other than any Excluded Subsidiary unless such Restricted Subsidiary is exclusively an Excluded Subsidiary on account of clause (e)(i) of the definition of "Excluded Subsidiary") or Indebtedness attaching to the assets that are acquired by the Borrower or any Restricted Subsidiary, in each case after the Effective Date as the result of a transaction permitted under this Agreement, but

(i) such Indebtedness existed at the time such Person became a Restricted Subsidiary or at the time such assets were acquired and, in each case, was not created in anticipation thereof;

(ii) such Indebtedness is not secured by Oil and Gas Properties to which Proved Reserves are attributed;

(iii) (A) the Borrower shall be in compliance on a Pro Forma Basis with the Financial Performance Covenants; *provided that* after giving *pro forma* effect to such acquisition or merger, (i) the Consolidated Total Net Leverage Ratio shall be no greater than 2.25 to 1.00 on a Pro Forma Basis and (B) Availability shall be at least 20% of the Loan Limit then in effect; and any Permitted Refinancing Indebtedness issued or incurred to refinance such Indebtedness.

(z) any other Indebtedness, together with any Permitted Refinancing Indebtedness issued or incurred to refinance such Indebtedness, in an aggregate principal amount not to exceed the greater of $75,000,000 and 2.5% of Adjusted Consolidated Net Tangible Assets (as measured at the time of incurrence) at any time outstanding; *provided*, that if any such Indebtedness is issued or incurred in reliance on Adjusted Consolidated Net Tangible Assets and any Permitted Refinancing Indebtedness issued or incurred to refinance such Indebtedness would cause the percentage of Adjusted Consolidated Net Tangible Assets (as measured at the time of incurrence) to be exceeded if calculated based on the Adjusted Consolidated Net Tangible Assets on the date of such refinancing, such percentage of Adjusted Consolidated Net Tangible Assets will not be deemed to be exceeded to the extent such Permitted Refinancing Indebtedness does not exceed the amount permitted under clause (A) of the definition of Permitted Refinancing Indebtedness.

Section 9.03 **Liens**. The Borrower will not, and will not permit any Restricted Subsidiary to, create, incur, assume or permit to exist any Lien on any of its Properties (now owned or hereafter acquired), except:

(a) Liens securing the Obligations;

(b) Excepted Liens;

(c) Liens (including liens arising under Capital Leases to secure Indebtedness under Capital Leases) securing Indebtedness permitted pursuant to Section 9.02(c); if (i) such Liens attach concurrently with or within 270 days after the acquisition, lease, repair, replacement, construction, expansion or improvement (as applicable) being financed with such Indebtedness, (ii) other than the property financed by such Indebtedness, such Liens do not at any time encumber any property, except for replacements thereof and accessions and additions to such property and the proceeds and the products thereof and customary security deposits and (iii) with respect to Capital Leases, such Liens do not at any time extend to or cover any assets (except for accessions and additions to such assets, replacements and products thereof and customary security deposits) other than the assets subject to such Capital Leases; but individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender;

(d) Liens existing on the Effective Date; but any Lien existing on the Effective Date securing Indebtedness in excess of (i) $5,000,000 individually or (ii) $10,000,000 in the aggregate (when taken together with all other Liens securing obligations outstanding in reliance on this clause (d) that are not listed on Schedule 9.03) shall only be permitted to the extent such Lien is listed on Schedule 9.03;

(e) the modification, replacement, extension or renewal of (i) any Lien permitted by clauses (a), (b), (c), (d), (f), (i), (r) and (s) (other than in respect of Liens securing Indebtedness permitted under Section 9.02(s)) of this section upon or in the same assets theretofore subject to such Lien or upon or in after-acquired property that is (A) affixed or incorporated into the property covered by such Lien, (B) in the case of Liens permitted by clause (f), subject to a Lien securing Indebtedness permitted under Section 9.02, the terms of which Indebtedness require or include a pledge of after-acquired property (it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition) and (C) the proceeds and products thereof or (ii) Liens securing Indebtedness incurred in replacement, extension or renewal (without increase in the amount or change in any direct or contingent obligor except to the extent otherwise permitted hereunder) of secured Indebtedness, to the extent the replacement, extension or renewal of the Indebtedness secured thereby is permitted by Section 9.02;

(f) Liens existing on the assets of any Person that becomes a Restricted Subsidiary, or existing on assets acquired, pursuant to a transaction permitted by this Agreement to the extent the Liens on such assets secure Indebtedness permitted by Section 9.02(y); if such Liens attach at all times only to the same assets that such Liens (or upon or in after-acquired property that is (i) affixed or incorporated into the property covered by such Lien, (ii) after-acquired property subject to a Lien securing Indebtedness permitted under Section 9.02(y), the terms of which Indebtedness require or include a pledge of after-acquired property (it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition), and (iii) the proceeds and products thereof) attached to, and secure only, the same Indebtedness or obligations (or any Permitted Refinancing Indebtedness incurred to Refinance such Indebtedness permitted by Section 9.02(y) that such Liens secured, immediately before such transaction);

(g) Liens securing Indebtedness or other obligations (i) of the Borrower or a Restricted Subsidiary in favor of a Credit Party and (ii) of any Restricted Subsidiary that is not a Credit Party in favor of any Restricted Subsidiary that is not a Credit Party;

(h) Liens (i) of a collecting bank arising under Section 4-210 of the UCC on items in the course of collection, (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business and (iii) in favor of a banking institution arising as a matter of law encumbering deposits (including the right of set-off);

(i) (i) Liens on cash advances in favor of the seller of any property to be acquired in an transaction permitted by this Agreement to be applied against the purchase price for such property, and (ii) Liens consisting of an agreement to Dispose of any property in a transaction permitted by this Agreement;

(j) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale or purchase of goods entered into by the Borrower or any Restricted Subsidiary in the ordinary course of business permitted by this Agreement;

(k) Liens in respect of any Qualifying VPP;

(l) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to brokerage accounts incurred in the ordinary course of business;

(m) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance or incurrence of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Borrower or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower and the Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any Restricted Subsidiary in the ordinary course of business;

(n) Liens solely on any cash earnest money deposits made by the Borrower or any Restricted Subsidiary in connection with any letter of intent or purchase agreement permitted hereunder;

(o) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(p) the prior right of consignees and their lenders under consignment arrangements entered into in the ordinary course of business;

(q) agreements to subordinate any interest of the Borrower or any Restricted Subsidiary in any accounts receivable or other proceeds arising from inventory consigned by the Borrower or any Restricted Subsidiary pursuant to an agreement entered into in the ordinary course of business;

(r) Liens on Stock in a joint venture that does not constitute a Restricted Subsidiary securing obligations of such joint venture so long as the assets of such joint venture do not constitute Collateral;

(s) Liens securing any Indebtedness permitted by Section 9.02(i), Section 9.02(p), Section 9.02(s) and Section 9.02(x);

(t) additional Liens on property other than the Collateral, so long as the aggregate principal amount of the obligations secured thereby at the time of the incurrence thereof and after giving pro forma effect thereto and the use of proceeds thereof, does not exceed the greater of $75,000,000 and 2.5% of Adjusted Consolidated Net Tangible Assets (measured, in each case, as of the date such Lien or the obligations secured is incurred based upon the financial statements most recently available before such date); but for purposes of determining the amount secured by Liens under this Section 9.03(t) such amount shall be the lesser of the outstanding amount of the secured obligations or the Fair Market Value of the property subject to such Lien;

(u) Liens arising pursuant to Section 107(l) of CERCLA, or other Environmental Law, unless such Lien (i) by action of the lienholder, or by operation of law, takes priority over any Liens arising under the Loan Documents on the property upon which it is a Lien, and (ii) relates to a liability of the Borrower or any Restricted Subsidiary that is reasonably likely to exceed $30,000,000;

(v) Liens arising from judgments or decrees in circumstances not constituting an Event of Default under Section 10.01(k); and

(w) Liens on cash or cash equivalents and held by a trustee under any indenture or other debt agreement issued in escrow pursuant to customary escrow arrangements pending the release thereof, or under any indenture or other debt agreement pursuant to customary discharge, redemption or defeasance provisions, in each case solely to the extent the relevant release, discharge, redemption or defeasance would be permitted hereunder.

Section 9.04 **Restricted Payments**. The Borrower will not, and will not permit any Restricted Subsidiary to, pay any dividends (other than Restricted Payments payable solely in its Stock (or the right to receive Stock) that is not Disqualified Stock) or return any capital to its equity holders or make any other distribution, payment or delivery of property or cash to its equity holders as such, or redeem, retire, purchase or otherwise acquire, directly or indirectly, for consideration, any shares of any class of its Stock or Stock Equivalents now or hereafter outstanding, or set aside any funds for any of the foregoing purposes, or permit any Restricted Subsidiary to purchase or otherwise acquire for consideration (other than in connection with an Investment permitted by Section 9.06) any Stock or Stock Equivalents of the Borrower, now or hereafter outstanding (all of the foregoing, "Restricted Payments"); except that:

(a) the Borrower may (or may make Restricted Payments to a Parent Entity to permit any Parent Entity thereof to) make Restricted Payments in the form of (or in the right to receive) Stock or Stock Equivalents or in exchange for another class of its (or such parent's) Stock or Stock Equivalents or with proceeds from substantially concurrent equity contributions or issuances of new Stock or Stock Equivalents, if such new Stock or Stock Equivalents contain terms

and provisions at least as advantageous to the Lenders in all material respects to their interests as those contained in the Stock or Stock Equivalents redeemed thereby, and the Borrower may pay Restricted Payments payable solely in the Stock and Stock Equivalents (other than Disqualified Stock not otherwise permitted by Section 9.02) of the Borrower;

(b) to the extent constituting Restricted Payments, the Borrower may make Investments permitted by Section 9.06;

(c) to the extent constituting Restricted Payments, the Borrower may enter into and consummate transactions expressly permitted by any provision of Section 9.10;

(d) the Borrower may repurchase Stock or Stock Equivalents of the Borrower (or any direct or indirect parent thereof) upon exercise of stock options or warrants if such Stock or Stock Equivalents represents all or a portion of the exercise price of such options or warrants;

(e) the Borrower or any Restricted Subsidiary may (i) pay cash in lieu of fractional shares in connection with any dividend, split or combination thereof or any acquisition permitted hereby and (ii) so long as, immediately after giving effect thereto, (A) no Default or Event of Default shall have occurred and be continuing and (B) no Borrowing Base Deficiency exists, honor any conversion request by a holder of convertible Indebtedness and make cash payments in lieu of fractional shares in connection with any such conversion and may make payments on convertible Indebtedness in accordance with its terms (and Borrower may make a Restricted Payment to any Parent Entity for such purpose);

(f) the Borrower may make Restricted Payments in an amount not to exceed 100% of the Borrower's Distributable Free Cash Flow as of the time such Restricted Payment is made, so long as (A) after giving *pro forma* effect thereto, (x) Availability is at least 20% of the Loan Limit then in effect and (y) the Consolidated Total Net Leverage Ratio is less than or equal to 2.00 to 1.00 on a Pro Forma Basis, (B) at the time of and immediately after giving effect thereto, no Event of Default or Borrowing Base Deficiency exists and is continuing and (C) the Borrower represents and warrants to the Lenders on the date that such Restricted Payment is made that (x) clauses (A) and (B) of this Section 9.04(f) shall be true and correct and (y) after giving effect to the Restricted Payment, the Borrower's Distributable Free Cash Flow shall be greater than $0;

(g) the Borrower may make Restricted Payments consisting of cash dividends to the holders of its Stock in an aggregate amount not to exceed $12,500,000 in any fiscal quarter; *provided* that any unused amounts from a fiscal quarter may be carried forward to future fiscal quarters as long as the aggregate cash dividends under this clause (g) does not exceed $50,000,000 in any fiscal year (including, for the avoidance of doubt, fiscal year ending December 31, 2021);

(h) the Borrower may pay any Restricted Payment within 60 days after the date of declaration thereof, if at the date of declaration such payment would have complied with the provisions of this Agreement;

(i) Restricted Subsidiaries may make Restricted Payments (i) to the Borrower or any other Restricted Subsidiary and (ii) ratably to all holders of its outstanding Stock and Stock Equivalents;

(j) if Borrower is a member (but not the parent) of a consolidated, combined, unitary or similar group or a disregarded entity of a corporation, in each case, for federal, state or local income tax purposes, any Credit Party may make payments and distributions to Borrower, and from Borrower to the parent of such group, as the case may be, to pay consolidated, combined or similar income or franchise taxes provided that such amounts for any taxable year shall not exceed the income or franchise tax liability that would have been payable by Borrower and its wholly owned Domestic Subsidiaries on a stand-alone basis for such year if Borrower was the parent of a consolidated, combined, unitary or similar group including such subsidiaries and had filed such return on a stand-alone basis,

(k) the Borrower may make payments described in Sections 9.11(a), (c), (d), (e), (h), and (i) (subject to the conditions set out therein);

(l) the distribution, by dividend or otherwise, of Stock and Stock Equivalents of, or Indebtedness owed to the Borrower or a Restricted Subsidiary by, an Unrestricted Subsidiary (or a Restricted Subsidiary that owns an Unrestricted Subsidiary); provided that such Restricted Subsidiary owns no assets other than Stock and Stock Equivalents of an Unrestricted Subsidiary (other than Unrestricted Subsidiaries the primary assets of which are cash and/or Permitted Investments); and

(m) payments made or expected to be made by the Borrower (or any direct or indirect parent company) or any of the Restricted Subsidiaries in respect of required withholding or similar non-U.S. Taxes with respect to any future, present or former employee, director, manager or consultant and any repurchases of Stock and Stock Equivalents in consideration of such payments including deemed repurchases in connection with the exercise of stock options.

Section 9.05 **Limitations on Debt Payments and Amendments**.

(a) The Borrower will not, and will not permit any Restricted Subsidiary to, optionally prepay, repurchase or redeem or otherwise defease any Permitted Additional Debt or Other Secured Debt (it being understood that payments of regularly scheduled cash interest and fees in respect of, and payment of principal on the scheduled maturity date of such other Indebtedness shall be permitted); but the Borrower or any Restricted Subsidiary may optionally prepay, repurchase, redeem or defease any Permitted Additional Debt or Other Secured Debt (i) with the proceeds of or in exchange for any Permitted Refinancing Indebtedness, (ii) by converting or exchanging such Permitted Additional Debt or Other Secured Debt to Stock (other than Disqualified Stock) of the Borrower or a Parent Entity, (iii) so long as no Event of Default or Borrowing Base Deficiency has occurred and is continuing or would result therefrom, the Borrower or the applicable Restricted Subsidiary may, substantially contemporaneously with (and, in any case, within sixty (60) days of) its receipt of any cash proceeds from any sale by the Borrower of Stock (other than Disqualified Stock) in Borrower, optionally prepay, repurchase or redeem or otherwise defease any Permitted Additional Debt or Other Secured Debt in an amount up to the amount of net cash proceeds received from the sale of such Stock of the Borrower and (iv) in an amount not to exceed 100% of the Borrower's Distributable Free Cash Flow as of the time such prepayment, repurchase, redemption or defeasement of Permitted Additional Debt or Other Secured Debt is made so long as (A) after giving *pro forma* effect thereto, (x) Availability is at least 20% of the Loan Limit then in effect and (y) the Consolidated Total Net Leverage Ratio

is less than or equal to 2.00 to 1.00 on a Pro Forma Basis, (B) at the time of and immediately after giving effect thereto, no Event of Default or Borrowing Base Deficiency exists and is continuing and (C) the Borrower represents and warrants to the Lenders on the date that such prepayment, repurchase, redemption or defeasement is made that (x) clauses (A) and (B) of this Section 9.05(a)(iv) shall be true and correct and (y) after giving effect to such prepayment, repurchase, redemption or defeasement, the Borrower's Distributable Free Cash Flow shall be greater than $0.

(b) The Borrower will not amend or modify the documentation governing any Other Secured Debt or Permitted Additional Debt or the terms applicable to any of the foregoing to the extent that (i) any such amendment or modification, taken as a whole, would be adverse to the Lenders in any material respect (it being agreed and understood that the payment of customary consent fees shall not be adverse to the Lenders) or (ii) the documentation governing any such Other Secured Debt or such Permitted Additional Debt, as so amended or modified, would not (A) be permitted to be included in the documentation governing any senior subordinated or subordinated Permitted Additional Debt or Other Secured Debt (as provided in the definitions thereof) or (B) permit such Indebtedness to be incurred pursuant to Section 9.02(p) or Section 9.02(v).

Section 9.06 **Investments, Loans and Advances**. The Borrower will not, and will not permit any Restricted Subsidiary to, make any Investment except:

(a) extensions of trade credit and purchases of assets and services (including purchases of inventory, supplies and materials) in the ordinary course of business;

(b) Investments in assets that constituted Permitted Investments at the time such Investments were made;

(c) Investments received in connection with the bankruptcy, reorganization or restructuring of suppliers, customers or other third parties that are not Affiliates and in settlement of delinquent obligations of, and other disputes with or judgments against, customers , suppliers or other third parties that are not Affiliates arising in the ordinary course of business or upon foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(d) Investments to the extent that payment for such Investments is made with Stock or Stock Equivalents (other than Disqualified Stock not otherwise permitted by Section 9.02) of the Borrower (or any direct or indirect parent thereof) or the proceeds from a contribution thereto or an issuance thereof;

(e) Investments constituting non-cash proceeds of Dispositions of assets to the extent such Disposition is permitted by Section 9.10;

(f) Investments made to repurchase or retire Stock or Stock Equivalents of the Borrower or any direct or indirect parent thereof owned by any employee or any stock ownership plan or key employee stock ownership plan of the Borrower (or any direct or indirect parent thereof);

(g) loans and advances to any direct or indirect parent of the Borrower in lieu of, and not in excess of the amount of, Restricted Payments to the extent permitted to be made to such parent in accordance with Section 9.04;

(h) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers in the ordinary course of business;

(i) Investments in the ordinary course of business consisting of endorsements for collection or deposit and customary trade arrangements with customers consistent with past practices;

(j) advances of payroll payments to employees, consultants or independent contractors or other advances of salaries or compensation to employees, consultants or independent contractors;

(k) Guarantee Obligations of the Borrower or any Restricted Subsidiary of leases (other than Capital Leases) or of other obligations that do not constitute Indebtedness, in each case entered into in the ordinary course of business;

(l) other Investments by the Borrower or a Restricted Subsidiary in direct ownership interests in additional Oil and Gas Properties and gathering, transportation, processing electricity and power generation or related systems or related to gas and mineral leases, unitization agreements, joint bidding agreements, service contracts, operating agreements, processing agreements, area of mutual interest agreements, farm-in, farm-out, joint operating agreement or other similar arrangements which are usual and customary in the oil and gas exploration and production business located within the geographic boundaries of the United States of America;

(m) Investments in Swap Agreements permitted by Section 9.18 and Section 8.19;

(n) Investments consisting of Indebtedness, Restricted Payments, fundamental changes and Dispositions permitted under Sections 9.02, 9.04, 9.09 and 9.10 (other than Section 9.04(c));

(o) Investments (a) by the Borrower or any Restricted Subsidiary in any Restricted Subsidiary or by any Restricted Subsidiary in the Borrower or (b) by the Borrower or any Restricted Subsidiary in or to any Person that will, upon making such Investment, become a Restricted Subsidiary (and to the extent required by and within the time periods provided herein a Guarantor) or made by any Restricted Subsidiary (including any Person that will upon making such Investment, become a Restricted Subsidiary) in or to the Borrower or any other Restricted Subsidiary (including any Person that will, upon making such Investment, become a Restricted Subsidiary);

(p) Investments consisting of licensing of intellectual property pursuant to joint marketing arrangements with other Persons in the ordinary course of business;

(q) Investments constituting Restructuring Transactions;

(r) other Investments so long as such Investment is made in an amount not to exceed 100% of the Borrower's Distributable Free Cash Flow and (A) after giving *pro forma* effect thereto, (x) Availability is at least 20% of the Loan Limit then in effect and (y) the Consolidated Total Net Leverage Ratio is less than or equal to 2.00 to 1.00 on a Pro Forma Basis, (B) at the time of and immediately after giving effect thereto, no Event of Default or Borrowing Base Deficiency exists and is continuing and (C) the Borrower represents and warrants to the Lenders on the date that such Investment is made that (x) clauses (A) and (B) of this Section 9.06(r) shall be true and correct and (y) after giving effect to such Investment, the Borrower's Distributable Free Cash Flow shall be greater than $0.

(s) other Investments that do not exceed the greater of $75,000,000 and 2.5% of Adjusted Consolidated Net Tangible Assets (measured at the time the Investment is made) in the aggregate at any time;

(t) the contribution of the Real Estate Financing Assets into an Unrestricted Subsidiary or other Person in which the Borrower or any Restricted Subsidiary owns Stock or Stock Equivalents;

(u) Investments held by a Person acquired (including by way of merger, amalgamation or consolidation) after the Effective Date otherwise in accordance with this Section 9.06 to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

(v) Investments resulting from pledges and deposits under clause (c) of the definition of "Excepted Liens" and clauses (i), (l), (p) and (w) of Section 9.03;

(w) advances in the form of a prepayment of expenses, so long as such expenses are being paid in accordance with customary trade terms of the Borrower or the relevant Restricted Subsidiary; and

(x) (i) Investments existing on the Effective Date as set forth on Schedule 9.06 and (ii) any extensions, modifications, replacements, renewals or reinvestments thereof, so long as the amount of any Investment made pursuant to this clause (x) is not increased at any time above the amount of such Investment as of the Effective Date.

Section 9.07 **Change in Business**. The Borrower and its Restricted Subsidiaries, taken as a whole, will not fundamentally and substantively alter the character of their business, taken as a whole, from the business conducted by the Borrower and its Restricted Subsidiaries on the date hereof and other business activities incidental or reasonably related thereto.

Section 9.08 **ERISA Compliance**. The Borrower will not, and will not permit any Subsidiary to, at any time:

(a) engage in any transaction in connection with which the Borrower or a Subsidiary could be subjected to either a civil penalty assessed pursuant to subsections (i) or (l) of

section 502 of ERISA or a tax imposed by section 4975 of the Code, except where such penalty or tax would not reasonably be expected to have a Material Adverse Effect;

(b) fail to make full payment when due of all amounts which, under the provisions of any Plan, agreement relating thereto or applicable law, Borrower or a Subsidiary is required to pay as contributions thereto, except where such failure would not reasonably be expected to have a Material Adverse Effect; or

(c) contribute to or assume an obligation to contribute to, or permit any ERISA Affiliate to contribute to or assume an obligation to contribute to, any employee welfare benefit plan, as defined in section 3(1) of ERISA that provides benefits to retirees or former employees of such entities that may not be terminated by such entities in their sole discretion at any time without any liability other than for benefits due as of, or claims incurred prior to, the effective date of such termination, except where such contribution or assumption of an obligation would not reasonably be expected to have a Material Adverse Effect.

Section 9.09 **Limitation on Fundamental Changes**. Except as permitted by Section 9.06 or 9.10 the Borrower will not, and will not permit any Restricted Subsidiary to, enter into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of, all or substantially all its assets, except that:

(a) the Borrower may merge, consolidate or amalgamate with any Person (including any Subsidiary), if (i) the Borrower shall be the surviving, continuing or resulting entity or, if the foregoing is not the case, the surviving, continuing, or resulting entity shall be an entity organized or existing under the laws of the United States, any state thereof, the District of Columbia or any territory thereof (the Borrower or such Person, as the case may be, being herein referred to as the "Successor Borrower"), (ii) the Successor Borrower (if other than the Borrower) shall expressly assume all the obligations of the Borrower under the Loan Documents pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent, (iii) no Borrowing Base Deficiency, Default or Event of Default has occurred and is continuing at the date of such merger, amalgamation or consolidation or would result from such consummation of such merger, amalgamation or consolidation, and (iv) if such merger, amalgamation or consolidation involves the Borrower and a Person that, before the consummation of such merger, amalgamation or consolidation, is not a Subsidiary of the Borrower (A) the Successor Borrower shall be in compliance, on a Pro Forma Basis with the Financial Performance Covenants, (B) each Guarantor, unless it is the other party to such merger, amalgamation or consolidation (or unless the Successor Borrower is the Borrower) shall have confirmed in a writing in form and substance acceptable to the Administrative Agent that the Guaranty and Collateral Agreement shall apply to the Successor Borrower's obligations under this Agreement (and shall have confirmed that its obligations under the Security Instruments shall apply to the Successor Borrower's obligations under this Agreement), (C) each mortgagor of a Mortgaged Property, unless it is the other party to such merger or consolidation or unless the Successor Borrower is the Borrower, shall have by an amendment to or restatement of the applicable Mortgage confirmed that its obligations thereunder shall apply to the Successor Borrower's obligations under this Agreement and (D) if reasonably requested by the Administrative Agent, an opinion of counsel shall be required to be provided to the effect that such merger, amalgamation or consolidation does not violate any Loan Document;

provided, further, that if the foregoing are satisfied, the Successor Borrower (if other than the Borrower) will succeed to, and be substituted for, the Borrower under this Agreement;

(b) any Restricted Subsidiary may merge, amalgamate or consolidate with (i) any Credit Party (but if the Borrower is involved in the case of any such merger, amalgamation or consolidation, the provisions of clause (a) above shall govern) or (ii) any other Person (including any other Subsidiary); if (A) in the case of any merger, amalgamation or consolidation involving one or more Restricted Subsidiaries, (1) a Restricted Subsidiary shall be the continuing or surviving Person or the Borrower shall take all steps necessary to cause the Person formed by or surviving any such merger, amalgamation or consolidation (if other than a Restricted Subsidiary) to become a Restricted Subsidiary, (B) in the case of any merger, amalgamation or consolidation involving one or more Guarantors, a Guarantor shall be the continuing or surviving Person or the Person formed by or surviving any such merger, amalgamation or consolidation (if other than a Guarantor) shall execute a supplement to the Guaranty and Collateral Agreement and any applicable Mortgage, each in form and substance reasonably satisfactory to the Administrative Agent in order for the surviving Person to become a Guarantor and pledgor, mortgagor and grantor of Collateral for the benefit of the Secured Parties within the time period required under Section 8.14, (C) no Borrowing Base Deficiency, Default or Event of Default has occurred and is continuing on the date of such merger, amalgamation or consolidation or would result from the consummation of such merger, amalgamation or consolidation, and (D) if such merger, amalgamation or consolidation involves a Subsidiary and a Person that, before the consummation of such merger, amalgamation or consolidation, is not a Restricted Subsidiary, the Borrower shall be in compliance, on a Pro Forma Basis with the Financial Performance Covenants;

(c) any Restricted Subsidiary that is not a Guarantor may merge, amalgamate or consolidate with, or Dispose of all or substantially all of its assets to, the Borrower or any other Restricted Subsidiary (but if the Borrower is involved in the case of any such merger, amalgamation or consolidation, the provisions of clause (a) above shall govern);

(d) any Restricted Subsidiary may liquidate or dissolve if (i) the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders and (ii) to the extent such Restricted Subsidiary is a Credit Party, any assets or business of such Restricted Subsidiary not otherwise Disposed of or transferred in accordance with Section 9.06 or 9.10, in the case of any such business, discontinued, shall be transferred to, or otherwise owned or conducted by, a Credit Party after giving effect to such liquidation or dissolution; and

(e) to the extent that no Borrowing Base Deficiency, Default or Event of Default would result from the consummation of such Disposition, the Borrower and the Restricted Subsidiaries may consummate a merger, dissolution, liquidation, consolidation or Disposition, the purpose of which is to effect a Disposition permitted pursuant to Section 9.10.

Section 9.10 **Limitations on Sales of Assets**. (a) The Borrower will not, and will not permit any Restricted Subsidiary to, (x) make any voluntary Disposition of any of its property, business or assets (including receivables and leasehold interests), whether now owned or hereafter

acquired or (y) sell to any Person (other than the Borrower or a Guarantor) any shares owned by it of any Restricted Subsidiary's Stock and Stock Equivalents, except that:

(i) the Borrower and the Restricted Subsidiaries may Dispose of (A) inventory and other goods held for sale, including Hydrocarbons, obsolete, worn out, used or surplus equipment, vehicles and other assets (other than accounts receivable) in the ordinary course of business (including equipment that is no longer necessary for the business of the Borrower or its Restricted Subsidiaries or is replaced by equipment of at least comparable value and use), (B) Permitted Investments, and (C) assets for the purposes of community and public outreach, including charitable contributions and similar gifts, funding of or participation in trade, business and technical associations, and political contributions made in accordance with applicable Requirements of Law, to the extent such assets are not material to the ability of the Borrower and its Restricted Subsidiaries, taken as a whole, to conduct its business in the ordinary course;

(ii) the Borrower and the Restricted Subsidiaries may Dispose of any Oil and Gas Properties (including pursuant to a Qualifying VPP) or any interest therein or the Stock or Stock Equivalents of any Restricted Subsidiary owning Oil and Gas Properties, if such Disposition is for Fair Market Value; *provided*, further, that if such Disposition of Oil and Gas Properties or of any Stock or Stock Equivalents of any Restricted Subsidiary owning Oil and Gas Properties involves Borrowing Base Properties included in the most recently delivered Reserve Report, then no later than two Business Days' before the date of consummation of any such Disposition, the Borrower shall provide notice to the Administrative Agent and the Collateral Agent of such Disposition and the Borrowing Base Properties so Disposed and the Borrowing Base shall be adjusted in accordance with the provisions of Section 2.07(g); *provided*, further, that to the extent that the Borrower is notified by the Administrative Agent that a Borrowing Base Deficiency could result from an adjustment to the Borrowing Base resulting from such Disposition, after the consummation of such Disposition(s), the Borrower shall have received net cash proceeds, or shall have cash on hand, sufficient to eliminate any such potential Borrowing Base Deficiency;

(iii) the Borrower and the Restricted Subsidiaries may Dispose of property or assets to the Borrower or to a Restricted Subsidiary; but if the transferor of such property is a Credit Party, either (A) the transferee thereof shall be a Credit Party (or shall become a Credit Party substantially contemporaneously with such Disposition) or (B) such transaction shall be permitted under Section 9.06;

(iv) the Borrower and any Restricted Subsidiary may affect any transaction permitted by Sections 9.04, 9.06 or 9.09;

(v) the Borrower and the Restricted Subsidiaries may lease, sublease, license or sublicense (on a non-exclusive basis with respect to any intellectual property) real, personal or intellectual property in the ordinary course of business;

(vi) Dispositions constituting like-kind exchanges (including reverse like-kind exchanges) of Borrowing Base Properties will be permitted to the extent that (A) (x) such property is exchanged for credit against the purchase price of similar replacement property or (y) the proceeds of such Disposition are applied to the purchase price of similar replacement property, in each case under Section 1031 of the Code or otherwise, and (B) if such Disposition results in a

reduction of the Borrowing Base pursuant to Section 2.07(g), the Borrower satisfies the requirements of Section 3.04(c)(ii);

(vii) (A) Dispositions of Hydrocarbon Interests to which no Proved Reserves are attributable will be permitted, and farm-outs of undeveloped acreage to which no Proved Reserves are attributable and assignments in connection with such farm-outs will be permitted and (B) Dispositions of surface interests or properties that are not Oil and Gas Properties in connection with the development of solar assets on such surface interests or properties;

(viii) Dispositions of Investments in joint ventures (regardless of the form of legal entity) will be permitted to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements to the extent the same would be permitted under Section 9.06;

(ix) transfers of property will be permitted if such transfer is subject to a Casualty Event or in connection with any condemnation proceeding with respect to Collateral or property that does not constitute Collateral;

(x) Dispositions of accounts receivable will be permitted (A) in connection with the collection or compromise thereof or (B) to the extent the proceeds thereof are used to prepay any Loans then outstanding;

(xi) the unwinding, terminating and/or offsetting of any Swap Agreement will be permitted (subject to the terms of Section 2.07(g)); but no later than one Business Day after the date of consummation of any unwinding, terminating and/or offsetting of any Scheduled Swap Agreement, the Borrower shall provide notice to the Administrative Agent of such unwinding, terminating and/or offsetting of such Scheduled Swap Agreement and the Borrowing Base shall be adjusted in accordance with and to the extent provided by the provisions of Section 2.07(g); *provided*, that to the extent that the Borrower is notified by the Administrative Agent that a Borrowing Base Deficiency could result from an adjustment to the Borrowing Base resulting from such unwinding, terminating and/or offsetting of any Scheduled Swap Agreement, after the consummation of such unwinding, terminating and/or offsetting of such Scheduled Swap Agreement, the Borrower shall have received net cash proceeds, or shall have cash on hand, sufficient to eliminate any such potential Borrowing Base Deficiency;

(xii) Dispositions of Oil and Gas Properties and other assets not included in the Borrowing Base will be permitted;

(xiii) Disposition of any asset between or among the Borrower and/or its Restricted Subsidiaries as a substantially concurrent interim Disposition in connection with a Disposition otherwise permitted pursuant to this Section 9.10 will be permitted;

(xiv) any Disposition of Stock or Stock Equivalents in, or Disposition of Indebtedness or other securities of, an Unrestricted Subsidiary (or a Restricted Subsidiary which owns an Unrestricted Subsidiary so long as such Restricted Subsidiary owns no assets other than the Stock or Stock Equivalents of such Unrestricted Subsidiary); and

(xv) Disposition of any easement on any surface rights to any Governmental Authority to satisfy the requirements of any "conservation easements" or similar programs established by any Governmental Authority; *provided* that such Disposition does not materially impair the exploitation and development of the affected Oil and Gas Properties.

(b) The Borrower will not, and will not permit any Restricted Subsidiary to, make any voluntary Disposition of Borrowing Base Properties, unless (i) no Default or Event of Default has occurred and is continuing or would result therefrom (after giving effect to any Mortgage executed and delivered to the Collateral Agent substantially concurrently with such Disposition), (ii) the Borrower shall be in compliance with the Financial Performance Covenants on a Pro Forma Basis and (iii) immediately after giving effect to such Disposition (and to any Mortgage executed and delivered to the Collateral Agent substantially concurrently with such Disposition), no Borrowing Base Deficiency shall exist.

Section 9.11 **Transactions with Affiliates**. The Borrower will not, and will not permit any Restricted Subsidiary to conduct, any material transaction with any of its Affiliates (other than the Borrower and the Restricted Subsidiaries or any entity that becomes a Restricted Subsidiary as a result of such transaction), unless the terms of such transaction (taken as a whole) are substantially at least as favorable to the Borrower or such Restricted Subsidiary as it would obtain at the time in a comparable arm's-length transaction (which includes, for the avoidance of doubt, any transaction consummated for Fair Market Value) with a Person that is not an Affiliate (or, if no comparable transaction is available with which to compare such transaction, such transaction is otherwise fair to the Borrower or the relevant Restricted Subsidiary as determined by a Responsible Officer of the Borrower in good faith); but the foregoing restrictions shall not apply to:

(a) the payment of Transaction Expenses,

(b) loans, advances and other transactions between or among the Borrower, any Subsidiary or any joint venture (regardless of the form of legal entity) in which the Borrower or any Subsidiary has invested (and which Subsidiary or joint venture would not be an Affiliate of the Borrower or such Subsidiary, but for the Borrower's or such Subsidiary's ownership of Stock or Stock Equivalents in such joint venture or such Subsidiary) to the extent permitted under Article IX,

(c) employment and severance arrangements and health, disability, retirement savings, employee benefit and similar insurance or benefit plans between the Borrower (or any direct or indirect parent thereof) and the Subsidiaries and their respective directors, officers, employees or consultants (including management and employee benefit plans or agreements, subscription agreements or similar agreements pertaining to the repurchase of Stock or Stock Equivalents pursuant to put/call rights or similar rights with current or former employees, officers, directors or consultants and equity option or incentive plans and other compensation arrangements) in the ordinary course of business or as otherwise approved by the Board of Directors of the Borrower (or any direct or indirect parent thereof),

(d) the payment of customary fees and reasonable out of pocket costs to, and indemnities provided on behalf of, directors, managers, consultants, officers and employees of the

Borrower (or any direct or indirect parent thereof) and the Subsidiaries in the ordinary course of business to the extent attributable to the ownership or operation of, or in connection with any services provided to, the Borrower and the Subsidiaries,

(e) transactions pursuant to agreements in existence on the Effective Date and set forth on Schedule 9.11 or any amendment thereto to the extent such an amendment is not adverse, taken as a whole, to the Lenders in any material respect,

(f) Restricted Payments, redemptions, repurchases and other actions permitted under Section 9.04 or Section 9.05 and Investments permitted under Section 9.06,

(g) any issuance of Stock or Stock Equivalents or other payments, awards or grants in cash, securities, Stock, Stock Equivalents or otherwise pursuant to, or the funding of, employment, consultant and director arrangements, equity options and equity ownership plans approved by the Board of Directors of the Borrower (or any direct or indirect parent thereof),

(h) transactions with joint ventures for the purchase or sale of goods, equipment and services entered into in a manner consistent with prudent business practice followed by companies in the industry of the Borrower and its Subsidiaries,

(i) payments by the Borrower (or any direct or indirect parent thereof) and the Subsidiaries pursuant to tax sharing agreements among the Borrower (and any such parent) and the Subsidiaries on customary terms; but payments by Borrower and the Subsidiaries under any such tax sharing agreements shall not exceed the excess (if any) of the amount they would have paid on a standalone basis over the amount they actually pay directly to Governmental Authorities,

(j) payments of loans (or cancellation of loans) to officers, directors, employees or consultants which are approved by the majority of the Board of Directors of the Borrower in good faith,

(k) any lease entered into between the Borrower or any Restricted Subsidiary, as lessee and any Affiliate of the Borrower, as lessor, which is approved by a majority of the disinterested members of the Board of Directors in good faith or, any lease entered into between the Borrower or any Restricted Subsidiary, as lessee, and any Affiliate of the Borrower, as lessor, in the ordinary course of business; and

(l) transactions with customers, clients, joint venture partners, suppliers or purchasers or sellers of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Agreement that are fair to the Borrower and the Restricted Subsidiaries, in the reasonable determination of the Board of Directors, are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party.

Section 9.12 **Negative Pledge Agreements**. The Borrower will not, and will not permit any Restricted Subsidiary to, enter into or permit to exist any Contractual Requirement (other than the Loan Documents or any documentation in respect of (a) secured Indebtedness or Permitted Additional Debt otherwise permitted hereunder or (b) the Credit Parties' Oil and Gas Properties to the extent that the property covered thereby is not required to be pledged as Collateral pursuant to the definition of "Collateral Requirements") that limits the ability of the Borrower or any

Guarantor to create, incur, assume or suffer to exist Liens on property of such Person for the benefit of the Secured Parties with respect to the Obligations or under the Loan Documents; but the foregoing shall not apply to Contractual Requirements that (i)(x) exist on the Effective Date and (to the extent not otherwise permitted by this section) are listed on Schedule 9.12 and (y) to the extent Contractual Requirements permitted by clause (x) are set forth in an agreement evidencing Indebtedness or other obligations, are set forth in any agreement evidencing any Permitted Refinancing Indebtedness incurred to Refinance such Indebtedness or obligation so long as such Permitted Refinancing Indebtedness does not expand the scope of such restriction in such Contractual Requirement, (ii) are binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary (or are binding on property at the time such property first becomes property of the Borrower or a Restricted Subsidiary), so long as such Contractual Requirements were not entered into solely in contemplation of such Person becoming a Restricted Subsidiary (or such property becomes property of the Borrower or a Restricted Subsidiary), (iii) represent Indebtedness of a Restricted Subsidiary that is not a Guarantor to the extent such Indebtedness is permitted by Section 9.02 so long as such Contractual Requirement applies only to such Subsidiary, (iv) arise pursuant to agreements entered into with respect to any Disposition permitted hereunder and are applicable solely to assets which are the subject of such Disposition, (v) are customary provisions in joint venture agreements or agreements governing property held with a common owner and other similar agreements or arrangements (with a third party acting as a co-venturer) relating solely to such joint venture or property or otherwise arise in (A) agreements which restrict the Disposition or distribution of assets or property in oil and gas leases, joint operating agreements, joint exploration and/or development agreements, participation agreements or (B) any production sharing contract or similar instrument on which a Lien cannot be granted without the consent of a third party and, in each case, other similar agreements entered into in the ordinary course of the oil and gas exploration and development business, (vi) are negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under Section 9.02, but solely to the extent any negative pledge relates to the property financed by or the subject of such Indebtedness, (vii) are customary restrictions on leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the assets subject thereto, (viii) comprise restrictions imposed by any agreement relating to secured Indebtedness permitted pursuant to Section 9.02 to the extent that such restrictions apply only to the property or assets securing such Indebtedness, (ix) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Subsidiary or in leases prohibiting Liens on retained property rights of the lessor in connection with operations of the lessee conducted on the leased property, (x) are customary provisions restricting assignment of any agreement entered into in the ordinary course of business, (xi) restrict the use of cash or other deposits imposed by customers or suppliers under contracts entered into in the ordinary course of business, (xii) are imposed by any Requirement of Law, (xiii) exist under any documentation governing any Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness but only to the extent such Contractual Requirement was contained in the document evidencing the Indebtedness being Refinanced, (xiv) are customary net worth provisions contained in real property leases entered into by Subsidiaries of the Borrower, so long as the Borrower has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of the Borrower and its Subsidiaries to meet their ongoing obligations, and (xv) are restrictions regarding licenses or sublicenses by the Borrower and its Restricted Subsidiaries of

intellectual property in the ordinary course of business (in which case such restriction shall relate only to such intellectual property) (clauses (i) through (xv), collectively, "Permitted Restrictions").

Section 9.13 **Limitations on Subsidiary Distributions**. The Borrower will not, and will not permit any Restricted Subsidiary that is not a Guarantor to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of any such Restricted Subsidiary to pay dividends or make any other distributions to the Borrower or any Restricted Subsidiary on its Stock or with respect to any other interest or participation in, or measured by, its profits or transfer any property to the Borrower or any Restricted Subsidiary except (in each case) for such encumbrances or restrictions existing under or by reason of:

(a) Contractual Requirements in effect on the Effective Date that are described on Schedule 9.13 or pursuant to the Loan Documents;

(b) purchase money obligations for property acquired in the ordinary course of business and obligations in respect of Capital Leases that impose restrictions on transferring the property so acquired;

(c) Requirement of Law or any applicable rule, regulation or order;

(d) any agreement or other instrument of a Person acquired by or merged or consolidated with or into the Borrower or any Restricted Subsidiary, or of an Unrestricted Subsidiary that is designated a Restricted Subsidiary, or that is assumed in connection with the acquisition of assets from such Person, in each case that is in existence at the time of such transaction (but not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person and its Subsidiaries, or the property or assets of the Person and its Subsidiaries, so acquired or designated;

(e) contracts for the sale of assets, including customary restrictions with respect to a Subsidiary pursuant to an agreement that has been entered into for the Disposition of all or substantially all of the Stock or assets of such Subsidiary;

(f) secured Indebtedness otherwise permitted to be incurred pursuant to Sections 9.02 and 9.03 that limit the right of the debtor to Dispose of the assets securing such Indebtedness;

(g) restrictions on cash or other deposits or net worth imposed by customers or suppliers under contracts entered into in the ordinary course of business;

(h) other Indebtedness, Disqualified Stock or preferred stock of Restricted Subsidiaries permitted to be incurred subsequent to the Effective Date pursuant to Section 9.02 and either (i) the provisions relating to such encumbrance or restriction contained in such Indebtedness are no less favorable to the Borrower, taken as a whole, as determined by a Responsible Officer of the Borrower in good faith, than the provisions contained in this Agreement or (ii) any such encumbrance or restriction contained in such Indebtedness does not prohibit (except upon a default or an event of default thereunder) the payment of dividends in an amount

sufficient, as determined by a Responsible Officer of the Borrower in good faith, to make scheduled payments of cash interest on the Obligations when due;

(i) customary provisions in joint venture agreements or agreements governing property held with a common owner and other similar agreements or arrangements relating solely to such joint venture or property;

(j) customary provisions contained in leases, sub-leases, licenses, sub-licenses or similar agreements, in each case, entered into in the ordinary course of business;

(k) provisions contained in agreements which prohibit the transfer of all or substantially all of the assets of the obligor thereunder unless the transferee shall assume the obligations of the obligor under such agreement;

(l) Permitted Restrictions; and

(m) any encumbrances or restrictions imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (a) through (j) above, if such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrower, no more restrictive in any material respect with respect to such encumbrance and other restrictions taken as a whole than those before such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

Section 9.14 **Designation and Conversion of Restricted and Unrestricted Subsidiaries**.

(a) Any Person that becomes a Subsidiary of the Borrower or any Restricted Subsidiary shall be a Restricted Subsidiary unless such Person (i) is designated as an Unrestricted Subsidiary on Schedule 7.14, as of the date hereof, (ii) is designated as an Unrestricted Subsidiary after the date hereof in compliance with Section 9.14(b), or (iii) is a subsidiary of an Unrestricted Subsidiary.

(b) The Borrower may designate by written notification thereof to the Administrative Agent, any Person that would otherwise be a Restricted Subsidiary of the Borrower, including a newly formed or newly acquired Person that would otherwise be a Restricted Subsidiary of the Borrower, as an Unrestricted Subsidiary if (i) prior, and after giving effect, to such designation, neither a Default nor a Borrowing Base Deficiency would exist, (ii) such Person does not own or operate any Borrowing Base Properties, other than Borrowing Base Properties permitted to be sold or otherwise transferred pursuant to Section 9.10 (which shall count as a Disposition thereunder), (iii) such Person is not a guarantor or the primary obligor with respect to any Other Secured Debt or any other Material Indebtedness unless such Person will be released contemporaneously with such designation, (iv) such Person is not a party to any agreement, contract, arrangement or understanding with the Borrower or any Subsidiary unless the terms of such agreement, contract, arrangement or understanding are permitted by Section 9.11, (v) such designation is deemed to be an Investment in an Unrestricted Subsidiary and such Investment would be permitted to be made under Section 9.06 and (vi) the Administrative Agent

shall have received a certificate of a Responsible Officer certifying that such designation complies with the requirements of this Section 9.14(b). For purposes of the foregoing, the designation of a Person as an Unrestricted Subsidiary shall be deemed to be the designation of all present and future subsidiaries of such Person as Unrestricted Subsidiaries. Except as provided in this Section 9.14(b), no Restricted Subsidiary may be redesignated as an Unrestricted Subsidiary.

(c) The Borrower may designate any Unrestricted Subsidiary to be a Restricted Subsidiary if after giving effect to such designation, (i) the representations and warranties of the Borrower and the other Credit Parties contained in each of the Loan Documents are true and correct in all material respects on and as of such date as if made on and as of the date of such redesignation except to the extent (A) any such representations and warranties are expressly limited to an earlier date, in which case, on and as of the date of such redesignation, such representations and warranties shall be true and correct in all material respects as of such specified earlier date and (B) to the extent that any such representation and warranty is expressly qualified by materiality or by reference to Material Adverse Effect, such representation and warranty (as so qualified) shall be true and correct in all respects on and as of the date of such redesignation, (ii) no Event of Default would exist as a result of such designation and (iii) the Borrower complies with the requirements of Section 8.14, Section 8.15 and Section 9.14(a). Upon any such designation, an amount equal to the lesser of the fair market value of the Borrower's direct and indirect ownership interest in such Subsidiary or the amount of the Borrower's cash investment previously made in such Subsidiary shall be deemed no longer outstanding for purposes of the limitation on Investments under Section 9.06.

Section 9.15

[Reserved].

Section 9.16 **Sanctions; Anti-Corruption Use of Proceeds**. The Borrower will not knowingly, directly or indirectly, use the proceeds of the Loans or use the Letters of Credit, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any applicable Anti-Corruption Law, or (ii) (A) to fund, in violation of applicable Sanctions, any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, or (B) in any other manner that would result in a violation of applicable Sanctions by any Person (including any Person participating in the Loans

or Letters of Credit), whether as agent bank, letter of credit issuer, lender, underwriter, advisor, investor, or otherwise.

Section 9.17 **Use of Proceeds**. The Borrower will not, and will not permit any Subsidiary to, use the proceeds of any Loans or Letter of Credit in violation of the provisions of Regulation T, Regulation U or Regulation X of the Board.

Section 9.18 **Swap Agreements**.

(a) The Borrower will not, and will not permit any Restricted Subsidiary to, enter into any Swap Agreements with any Person other than:

(i) Swap Agreements with an Approved Counterparty not for speculative purposes in respect of commodities fixing a price for a term of not more than sixty (60) months and the notional volumes for which (when aggregated with other commodity Swap Agreements then in effect other than put or floor options as to which an upfront premium has been paid or basis differential swaps on volumes already hedged pursuant to other Swap Agreements) do not exceed, as of the date such Swap Agreement is executed, (x) ninety percent (90%) of the reasonably anticipated projected production from the total Proved Reserves of the Credit Parties (as forecast based upon the most recently delivered Reserve Report) for each of (A) crude oil and (B) natural gas and natural gas liquids (taken together), calculated separately (on a monthly basis) for the period from the Effective Date through the 24th month following the Effective Date and (y) eighty percent (80%) of the reasonably anticipated projected production from the total Proved Reserves of the Credit Parties (as forecast based upon the most recently delivered Reserve Report) for each of (A) crude oil and (B) natural gas and natural gas liquids (taken together), calculated separately (on a monthly basis) for the period representing the 25th month following the date of the Effective Date through the 48th month following the Effective Date; *provided* that the Borrower shall have the option to update the reasonably anticipated projected production from Oil and Gas Properties between the delivery of Reserve Reports hereunder (which updates shall be provided to the Administrative Agent in writing and shall be in form and substance reasonably satisfactory to the Administrative Agent) and shall have the option to enter into commodity Swap Agreements with respect to such updated projected production subject to the foregoing limitation on aggregate notional volumes;

(ii) Swap Agreements with an Approved Counterparty not for speculative purposes in respect of interest rates, the notional amounts of which (when aggregated with all other Swap Agreements of the Borrower and its Subsidiaries then in effect) do not exceed eighty-five percent (85%) of the then outstanding principal amount of the Borrower's Indebtedness for borrowed money; and

(iii) in addition to Swap Agreements under Section 9.18(a)(i), in connection with a proposed acquisition of Oil and Gas Properties or Stock or Stock Equivalents of a Person owning Oil and Gas Properties (a "Proposed Acquisition"), the Borrower or any Restricted Subsidiary may also enter into incremental Swap Agreements with respect to the reasonably anticipated projected production from the Oil and Gas Properties subject of the Proposed Acquisition so long as (A) the Borrower or a Restricted Subsidiary has signed a definitive acquisition agreement in connection with a Proposed Acquisition and (B) the aggregate notional

volumes associated with such incremental Swap Agreements do not exceed eighty-five percent (85)% of the reasonably anticipated projected production from the total Proved Reserves that are the subject of such Proposed Acquisition (as forecast based upon the reserve report for the Oil and Gas Properties subject of such Proposed Acquisition which has been delivered to the Lenders) of crude oil, natural gas and natural gas liquids, calculated separately, for each calendar quarter during the period of thirty-six (36) months (unless otherwise approved by the Administrative Agent in its sole discretion) following the date such incremental Swap Agreement is executed. The Borrower may permit such incremental Swap Agreements to remain in place so long as none of the following has occurred: (1) the sixtieth (60th) day (or such longer period as the Administrative Agent may reasonably agree) after the date of the termination of the definitive acquisition agreement in connection with such Proposed Acquisition has passed or (2) the ninetieth (90th) day (or such longer period as the Administrative Agent may reasonably agree) after such definitive acquisition agreement in connection with such Proposed Acquisition was executed (or, in the event parties mutually extended the closing date, the one hundred and twentieth (120th) day after such definitive acquisition agreement in connection with such Proposed Acquisition was executed) has passed and the Proposed Acquisition has not been consummated. If such incremental Swap Agreements are not permitted to remain in place pursuant to the preceding sentence, the Borrower shall promptly terminate or unwind such Swap Agreements.

Notwithstanding the foregoing, the Borrower and its Restricted Subsidiaries will be permitted to enter into additional non-speculative Swap Agreements with Approved Counterparties to hedge or manage any of the risks related to Forecasted Production (such Swap Agreements, "Forecasted Production Swap Agreements") so long as, at the time such Forecasted Production Swap Agreement is entered into (1) such Forecasted Production Swap Agreement relates only to the twenty-four (24) calendar months covered by the most recently delivered Forecasted Production Report and (2) the notional volumes of Hydrocarbons subject to such Forecasted Production Swap Agreement (when aggregated with all other commodity Swap Agreements then in effect, other than puts, floors and basis differential swaps on volumes already hedged pursuant to other Swap Agreements) shall not exceed the lesser of (x) 80% of the Forecasted Production for such month (calculated separately for (i) crude oil and (ii) natural gas and natural gas liquids (for purposes of this clause (ii) only, taken together)) as set forth in the most recently delivered Forecasted Production Report and (y) 80% of the reasonably anticipated projected monthly production from Oil and Gas Properties which are classified as Proved Reserves (calculated separately for (i) crude oil and (ii) natural gas and natural gas liquids (for purposes of this clause (ii) only, taken together)) based on the most recent Reserve Report delivered by the Borrower to the Administrative Agent in accordance with Section 8.12.

Notwithstanding the foregoing, in no event shall any Swap Agreement, (i) contain any requirement, agreement or covenant for the Borrower or any Subsidiary to post collateral or margin to secure their obligations under such Swap Agreement other than the benefit of the Security Instruments as contemplated herein or (ii) have a tenor longer than sixty (60) months.

(b) If, after the end of any calendar quarter (the "Test Quarter"), the Borrower determines that the aggregate volume of all commodity Swap Agreements (other than puts, floors and basis differential swaps on volumes already hedged pursuant to other Swap Agreements) for which settlement payments were calculated during such Test Quarter exceeded the actual production of Hydrocarbons in such quarter, then the Borrower shall, within thirty (30) days of

such determination (as such date may be extended by the Administrative Agent in its sole discretion but, in any event, by not more than thirty (30) days), terminate, create off-setting positions or otherwise unwind existing Swap Agreements (other than basis differential swaps) such that, at such time, future hedging volumes will not exceed, on a quarterly basis, the volume limitations imposed in this Section 9.18 above for each subsequent quarterly period after the Test Quarter.

(c) It is understood that for purposes of this Section 9.18, the following Swap Agreements shall be deemed not to be speculative or entered into for speculative purposes: (i) any commodity Swap Agreement intended, at inception of execution, to hedge or manage any of the risks related to existing and or forecasted Hydrocarbon production of the Borrower or its Restricted Subsidiaries (whether or not contracted) and (ii) any Swap Agreement intended, at inception of execution, (A) to hedge or manage the interest rate exposure associated with any debt securities, debt facilities or leases (existing or forecasted) of the Borrower or its Restricted Subsidiaries, (B) for foreign exchange or currency exchange management, (C) to manage commodity portfolio exposure associated with changes in interest rates or (D) to hedge any exposure that the Borrower or its Restricted Subsidiaries may have to counterparties under other Swap Agreements such that the combination of such Swap Agreements is not speculative taken as a whole.

Section 9.19 **Amendments to Organizational Documents**. Except with the prior written approval of the Majority Lenders (such consent not to be unreasonably withheld or delayed), the Borrower will not, and will not permit any Restricted Subsidiary to amend, supplement or modify its Organizational Documents in a manner, or take any action that would impair its rights under its Organizational Documents, in each case, that would have a materially adverse effect on the rights and interests of the Administrative Agent and the Lenders.

Section 9.20 **Changes in Fiscal Year**. The Borrower shall not, and shall not permit any Subsidiary to, have its fiscal year end on a date other than December 31 or change its method of determining fiscal quarters.

ARTICLE X
EVENTS OF DEFAULT; REMEDIES

Section 10.01 **Events of Default**. One or more of the following events shall constitute an "Event of Default":

(a) the Borrower shall fail to pay (i) any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof, by acceleration or otherwise or (ii) any interest on the Loans when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) days;

(b) the Borrower shall fail to pay any fee or any other amount (other than an amount referred to in Section 10.01(a)) payable under any Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five (5) days;

(c) any representation or warranty made or deemed made by or on behalf of the Borrower or any Restricted Subsidiary in or in connection with any Loan Document or any amendment or modification of any Loan Document or waiver under such Loan Document, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder that (i) was subject to a materiality qualifier (by reference to Material Adverse Effect or otherwise) shall prove to have been incorrect when made or deemed made or (ii) was not subject to a materiality qualifier shall prove to have been incorrect in any material respect when made or deemed made;

(d) the Borrower or any Restricted Subsidiary shall fail to observe or perform any covenant, condition or agreement contained in Section 8.01(d) or (f), Section 8.02(b)(i), Section 8.03 (solely with respect to the Borrower), Section 8.14, Section 8.17, Section 8.18, Section 8.19, Section 8.20 or Article IX;

(e) the Borrower or any Restricted Subsidiary shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in Section 10.01(a), Section 10.01(b), Section 10.01(c) or Section 10.01(d)) or any other Loan Document, and such failure shall continue unremedied for a period of thirty (30) days after the earlier to occur of (i) a Responsible Officer of the Borrower or any Restricted Subsidiary having knowledge of such default, or (ii) receipt of notice thereof by the Borrower from the Administrative Agent;

(f) the Borrower or any Restricted Subsidiary shall fail to make any payment of principal or interest on any Material Indebtedness (other than the Indebtedness described in Section 10.01(a) and Section 10.01(b)), when and as the same shall become due and payable, and such failure to pay shall extend beyond any applicable period of grace;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits the holder or holders of such Material Indebtedness or any trustee or agent on its or their behalf to cause such Material Indebtedness to become due, or to require the Redemption thereof or any offer to Redeem to be made in respect thereof, prior to its scheduled maturity or require the Borrower or any Restricted Subsidiary to make an offer in respect thereof (unless such offer is subject to the prior Payment in Full) (other than (A) as a result of a regularly scheduled required prepayment or as a mandatory prepayment, redemption or offer or redemption, (B) in the case of any Indebtedness in respect of any Swap Agreement, as a result of a termination event or equivalent event under such Swap Agreement and (C) secured Indebtedness that becomes due as a result of a Disposition (including as a result of Casualty Event) of the property or assets securing such Indebtedness permitted under this Agreement);

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking liquidation, reorganization or other relief in respect of the Borrower or any Specified Subsidiary or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Specified Subsidiary or for a substantial part of its assets, and, in any such case,

such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) the Borrower or any Specified Subsidiary shall voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in Section 10.01(h), apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Specified Subsidiary or for a substantial part of its assets, file an answer admitting the material allegations of a petition filed against it in any such proceeding, make a general assignment for the benefit of creditors, or take any action for the purpose of effecting any of the foregoing;

(j) the Borrower or any Specified Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(k) one or more judgments for the payment of money in an aggregate amount in excess of the greater of $75,000,000 and 2.0% of Adjusted Consolidated Net Tangible Assets (to the extent not covered by independent third party insurance as to which the insurer, which is not subject to an insolvency proceeding, does not dispute coverage) shall be rendered against the Borrower, any Restricted Subsidiary or any combination thereof and the same shall not be either discharged, satisfied, vacated or stayed within sixty (60) days after becoming a final judgment;

(l) the Guaranty and Collateral Agreement, any Mortgage or any other material Security Instrument after delivery thereof shall for any reason, except to the extent permitted by the terms thereof, cease to be in full force and effect and valid, binding and enforceable in accordance with their terms against the Borrower or any Restricted Subsidiary party thereto, or shall be repudiated by any of them, or cease to create valid and perfected Liens of the priority required thereby on the Collateral purported to be covered thereby, except to the extent permitted by the terms of this Agreement or the Security Instruments, or the Borrower or any Restricted Subsidiary or any of their Affiliates shall so state in writing;

(m) other than transactions contemplated by the Plan of Reorganization to occur on the Effective Date, a Change in Control shall occur; or

(n) an ERISA Event shall have occurred that, when taken together with all other ERISA Events that have occurred, would reasonably be expected to result in a Material Adverse Effect.

Section 10.02 **Remedies**.

(a) In the case of an Event of Default other than one described in Section 10.01(h) or Section 10.01(i), at any time thereafter during the continuance of such Event of Default, the Administrative Agent may, and at the request of the Majority Lenders, shall, by written notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments and/or the LC Commitments, and thereupon the Commitments and/or the LC Commitments shall terminate immediately, and (ii) declare the Notes and the Loans then outstanding to be due and payable in whole (or in part, in which case any

principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower and the Guarantors accrued under this Agreement, the Notes and the other Loan Documents (including the payment of Cash Collateral to secure the LC Exposure as provided in Section 2.08(j)), shall become due and payable immediately upon the notice described above, without presentment, demand, protest, prior notice of intent to accelerate, or other notice of any kind, all of which are hereby waived by the Borrower and each other Credit Party; and in case of an Event of Default described in Section 10.01(h), or Section 10.01(i), the Commitments shall automatically terminate and the Notes and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and the other obligations of the Borrower and the Guarantors accrued under this Agreement, the Notes and the other Loan Documents (including the payment of Cash Collateral to secure the LC Exposure as provided in Section 2.08(j)), shall automatically become due and payable, without presentment, demand, protest, notice of intent to accelerate, notice of acceleration or other notice of any kind, all of which are hereby waived by the Borrower and each Guarantor.

(b) In the case of the occurrence and continuation of an Event of Default, the Administrative Agent, Collateral Agent and the Lenders will have all other rights and remedies available at law and equity, subject in all respects to Section 11.07.

(c) Subject to any Acceptable Intercreditor Agreement, any Acceptable Collateral Trust Agreement and any Acceptable Hedge Intercreditor Agreement, all proceeds realized from the liquidation or other disposition of Collateral or otherwise received after maturity of the Loans, whether from the Borrower or another Credit Party, by acceleration or otherwise, shall be applied:

(i) first, to payment or reimbursement of that portion of the Obligations constituting fees, expenses and indemnities payable to the Administrative Agent or the Collateral Agent in their capacities as such;

(ii) second, *pro rata* to payment or reimbursement of that portion of the Obligations constituting fees, expenses and indemnities payable to the Lenders;

(iii) third, *pro rata* to payment of accrued interest on the Loans;

(iv) fourth, *pro rata* to payment of principal outstanding on the Tranche A Loans, to serve as Cash Collateral to secure outstanding LC Exposure, to payment of Secured Swap Obligations then due and owing to Secured Swap Parties and to payment of Obligations then due and owing to Treasury Management Lenders under Lender Treasury Management Agreements;

(v) fifth, *pro rata* to payment of principal outstanding on the Tranche B Loans;

(vi) sixth, *pro rata* to any other Obligations then due and owing;

(vii) seventh, any excess, after all of the Obligations (other than with respect to contingent indemnity obligations for which no claim has been made) shall have been

indefeasibly paid in full in cash, shall be paid to the Borrower or as otherwise required by any Requirement of Law.

(d) In the case of the occurrence of an Event of Default which results in the termination of the Commitments, then each of the Facility Amount and the Borrowing Base shall automatically and concurrently be reduced to $0.

Notwithstanding the foregoing, amounts received from the Borrower or any Guarantor that is not an "eligible contract participant" under the Commodity Exchange Act shall not be applied to any Excluded Swap Obligations (it being understood, that in the event that any amount is applied to Obligations other than Excluded Swap Obligations as a result of this clause, the Collateral Agent and the Administrative Agent shall make such adjustments as they determine are appropriate to distributions pursuant to clause *fourth* above from amounts received from "eligible contract participants" under the Commodity Exchange Act to ensure, as nearly as possible, that the proportional aggregate recoveries with respect to Obligations described in clause *fourth* above by the holders of any Excluded Swap Obligations are the same as the proportional aggregate recoveries with respect to other Obligations pursuant to clause *fourth* above).

ARTICLE XI
THE AGENT

Section 11.01 **Authorization and Action**.

(a) Each Lender and each Issuing Bank hereby irrevocably appoints the entities named as Administrative Agent and Collateral Agent in the heading of this Agreement and their successors and assigns to serve as the administrative agent and collateral agent under the Loan Documents and each Lender and each Issuing Bank authorizes each of the Administrative Agent and the Collateral Agent to take such actions as agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Administrative Agent and the Collateral Agent, as the case may be, under such agreements and to exercise such powers as are reasonably incidental thereto. Without limiting the foregoing, each Lender and each Issuing Bank hereby authorizes each of the Administrative Agent and the Collateral Agent to execute and deliver, and to perform its obligations under, each of the Loan Documents to which the Administrative Agent or the Collateral Agent is a party, and to exercise all rights, powers and remedies that the Administrative Agent or the Collateral Agent may have under such Loan Documents. Unless otherwise specifically set forth herein, the Collateral Agent shall have all the rights and benefits of the Administrative Agent set forth in this Article.

(b) As to any matters not expressly provided for herein and in the other Loan Documents (including enforcement or collection), each of the Administrative Agent and the Collateral Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the written instructions of the Majority Lenders (or such other number or percentage of the Lenders as shall be necessary, pursuant to the terms in the Loan Documents), and, unless and until revoked in writing, such instructions shall be binding upon each Lender and each Issuing Bank; *provided*, *however*, that neither the Administrative Agent nor the Collateral Agent shall be required to take any action that (i) the Administrative Agent or the Collateral Agent in good faith

believes exposes it to liability unless the Administrative Agent or the Collateral Agent receives an indemnification and is exculpated in a manner satisfactory to it from the Lenders and the Issuing Banks with respect to such action or (ii) is contrary to this Agreement or any other Loan Document or applicable law, including any action that may be in violation of the automatic stay under any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors; *provided*, *further*, that the Administrative Agent and the Collateral Agent may seek clarification or direction from the Majority Lenders prior to the exercise of any such instructed action and may refrain from acting until such clarification or direction has been provided. Except as expressly set forth in the Loan Documents, the Administrative Agent and the Collateral Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower, any Subsidiary or any Affiliate of any of the foregoing that is communicated to or obtained by the Person serving as Administrative Agent, Collateral Agent or any of their respective Affiliates in any capacity. Nothing in this Agreement shall require the Administrative Agent or the Collateral Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(c) In performing its functions and duties hereunder and under the other Loan Documents, each of the Administrative Agent and the Collateral Agent is acting solely on behalf of the Lenders and the Issuing Banks (except, in the case of the Administrative Agent, in limited circumstances expressly provided for herein relating to the maintenance of the Register), and its duties are entirely mechanical and administrative in nature. Without limiting the generality of the foregoing:

(i) the Administrative Agent and the Collateral Agent do not assume and shall not be deemed to have assumed any obligation or duty or any other relationship as the agent, fiduciary or trustee of or for any Lender or Issuing Bank other than as expressly set forth herein and in the other Loan Documents, regardless of whether a Default or an Event of Default has occurred and is continuing (and it is understood and agreed that the use of the term "agent" (or any similar term) herein or in any other Loan Document with reference to the Administrative Agent or the Collateral Agent is not intended to connote any fiduciary duty or other implied (or express) obligations arising under agency doctrine of any applicable law, and that such term is used as a matter of market custom and is intended to create or reflect only an administrative relationship between contracting parties); additionally, each Lender agrees that it will not assert any claim against the Administrative Agent or the Collateral Agent based on an alleged breach of fiduciary duty by the Administrative Agent or the Collateral Agent in connection with this Agreement and/or the transactions contemplated hereby;

(ii) where the Collateral Agent is required or deemed to act as a trustee in respect of any Collateral over which a security interest has been created pursuant to a Loan Document expressed to be governed by the laws of the United States, or is required or deemed to hold any Collateral "on trust" pursuant to the foregoing, the obligations and liabilities of the Collateral Agent to the Secured Parties in its capacity as trustee shall be excluded to the fullest extent permitted by applicable law;

(iii) nothing in this Agreement or any Loan Document shall require the Administrative Agent or the Collateral Agent to account to any Lender for any sum or the profit element of any sum received by the Administrative Agent or the Collateral Agent for its own account;

(d) Each of the Administrative Agent and the Collateral Agent may perform any of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent or the Collateral Agent. The Administrative Agent, the Collateral Agent and any such sub-agent may perform any of their respective duties and exercise their respective rights and powers through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent or the Collateral Agent and any such sub-agent, and shall apply to their respective activities pursuant to this Agreement. The Administrative Agent and the Collateral Agent shall not be responsible for the negligence or misconduct of any sub-agent except to the extent that a court of competent jurisdiction determines in a final judgment that the Administrative Agent or the Collateral Agent, as the case may be, acted with gross negligence or willful misconduct in the selection of such sub-agent.

(e) No Arranger shall have obligations or duties whatsoever in such capacity under this Agreement or any other Loan Document and shall incur no liability hereunder or thereunder in such capacity, but all such persons shall have the benefit of the indemnities provided for hereunder.

(f) In case of the pendency of any proceeding with respect to any Credit Party under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, the Administrative Agent and the Collateral Agent (irrespective of whether the principal of any Loan or any reimbursement obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent or the Collateral Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, LC Disbursements and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks, the Administrative Agent and the Collateral Agent (including any claim under Section 3.02, 3.05, 5.01, 5.03 and 12.03) allowed in such judicial proceeding; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such proceeding is hereby authorized by each Lender, each Issuing Bank and each other Secured Party to make such payments to the Administrative Agent and the Collateral Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, the Issuing Banks or the other Secured Parties, to pay to the Administrative Agent

and the Collateral any amount due to it, in their respective capacities as the Administrative Agent and the Collateral Agent, under the Loan Documents (including under Section 12.03). Nothing contained herein shall be deemed to authorize the Administrative Agent or the Collateral Agent to authorize or consent to or accept or adopt on behalf of any Lender or Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or Issuing Bank or to authorize the Administrative Agent or the Collateral Agent to vote in respect of the claim of any Lender or Issuing Bank in any such proceeding.

(g) The provisions of this Article (other than Section 11.05 and Section 11.07) are solely for the benefit of the Administrative Agent, the Collateral Agent, the Lenders and the Issuing Banks, and, except solely to the extent of the Borrower's rights to consent pursuant to and subject to the conditions set forth in this Article, none of the Borrower or any Subsidiary, or any of their respective Affiliates, shall have any rights as a third party beneficiary under any such provisions (other than Section 11.05 and Section 11.07). Each Secured Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the guarantees of the Obligations provided under the Loan Documents, to have agreed to the provisions of this Article.

Section 11.02 **Administrative Agent's and Collateral Agent's Reliance, Limitation of Liability, Etc.**

(a) The Administrative Agent, the Collateral Agent and their respective Related Parties shall not be (i) liable for any action taken or omitted to be taken by such party, the Administrative Agent, the Collateral Agent or any of their respective Related Parties under or in connection with this Agreement or the other Loan Documents (x) with the consent of or at the request of the Majority Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent or the Collateral Agent shall believe in good faith to be necessary, under the circumstances as provided in the Loan Documents) or (y) in the absence of its own gross negligence or willful misconduct (such absence to be presumed unless otherwise determined by a court of competent jurisdiction by a final and non-appealable judgment) or (ii) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Credit Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent or the Collateral Agent under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document (including, for the avoidance of doubt, in connection with the Administrative Agent's or the Collateral Agent's reliance on any Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page) or for any failure of any Credit Party to perform its obligations hereunder or thereunder.

(b) Neither the Administrative Agent nor the Collateral Agent shall be deemed to have knowledge of any Default or Event of Default unless and until written notice thereof (stating that it is a "notice of Default" or a "notice of an Event of Default") is given to the Administrative Agent by the Borrower, a Lender or an Issuing Bank. Further, neither the Administrative Agent nor the Collateral Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered

thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or the occurrence of any Default or Event of Default, (iv) the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Article VI or elsewhere in any Loan Document, other than to confirm receipt of items (which on their face purport to be such items) expressly required to be delivered to the Administrative Agent or the Collateral Agent or satisfaction of any condition that expressly refers to the matters described therein being acceptable or satisfactory to the Administrative Agent or the Collateral Agent, as the case may be or (vi) the creation, perfection or priority of Liens on the Collateral.

(c) Without limiting the foregoing, each of the Administrative Agent and Collateral Agent (i) may treat the payee of any promissory note as its holder until such promissory note has been assigned in accordance with Section 12.04, (ii) may rely on the Register to the extent set forth in Section 12.04(b), (iii) may consult with legal counsel (including counsel to the Borrower), independent public accountants and other experts selected by it, and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts, (iv) makes no warranty or representation to any Lender or Issuing Bank and shall not be responsible to any Lender or Issuing Bank for any statements, warranties or representations made by or on behalf of any Credit Party in connection with this Agreement or any other Loan Document, (v) in determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, may presume that such condition is satisfactory to such Lender or Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or Issuing Bank sufficiently in advance of the making of such Loan or the issuance of such Letter of Credit and (vi) shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any notice, consent, certificate or other instrument or writing (which writing may be a fax, any electronic message, Internet or intranet website posting or other distribution) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated by the proper party or parties (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

Section 11.03 **Posting of Communications**.

(a) The Borrower agrees that the Administrative Agent may, but shall not be obligated to, make any Communications available to the Lenders and the Issuing Banks by posting the Communications on IntraLinks™, DebtDomain, SyndTrak, ClearPar or any other electronic platform chosen by the Administrative Agent to be its electronic transmission system (the "Approved Electronic Platform").

(b) Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by the Administrative Agent from time to time (including, as of the Effective Date, a user ID/password authorization system) and the Approved Electronic Platform is secured through a per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each of the Lenders, each of the Issuing Banks and the Borrower

acknowledges and agrees that the distribution of material through an electronic medium is not necessarily secure, that the Administrative Agent is not responsible for approving or vetting the representatives or contacts of any Lender that are added to the Approved Electronic Platform, and that there may be confidentiality and other risks associated with such distribution. Each of the Lenders, each of the Issuing Banks and the Borrower hereby approves distribution of the Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.

(c) THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS ARE PROVIDED "AS IS" AND "AS AVAILABLE". THE APPLICABLE PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS, OR THE ADEQUACY OF THE APPROVED ELECTRONIC PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE APPLICABLE PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT, ANY ARRANGER OR ANY OF THEIR RESPECTIVE RELATED PARTIES (COLLECTIVELY, "APPLICABLE PARTIES") HAVE ANY LIABILITY TO ANY CREDIT PARTY, ANY LENDER, ANY ISSUING BANK OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND, INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY CREDIT PARTY'S OR THE ADMINISTRATIVE AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET OR THE APPROVED ELECTRONIC PLATFORM, EXCEPT TO THE EXTENT THE LIABILITY OF ANY SUCH PERSON IS FOUND BY A FINAL AND NON-APPEALABLE JUDGMENT OF A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM SUCH PERSON'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(d) Each Lender and each Issuing Bank agrees that notice to it (as provided in the next sentence) specifying that Communications have been posted to the Approved Electronic Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender and Issuing Bank agrees (i) to notify the Administrative Agent in writing (which could be in the form of electronic communication) from time to time of such Lender's or Issuing Bank's (as applicable) email address to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such email address.

(e) Each of the Lenders, each of the Issuing Banks and the Borrower agrees that the Administrative Agent may, but (except as may be required by applicable law) shall not be obligated to, store the Communications on the Approved Electronic Platform in accordance with the Administrative Agent's generally applicable document retention procedures and policies.

(f) Nothing herein shall prejudice the right of the Administrative Agent, the Collateral Agent, any Lender or any Issuing Bank to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

Section 11.04 **The Administrative Agent and the Collateral Agent Individually**. With respect to its Commitments, Loans, LC Commitments and Letters of Credit, the Person serving as the Administrative Agent or the Collateral Agent, respectively, shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender or Issuing Bank, as the case may be. The terms "Issuing Banks", "Lenders", "Majority Lenders", "Required Lenders" and any similar terms shall, unless the context clearly otherwise indicates, include the Administrative Agent or the Collateral Agent, respectively, in its individual capacity as a Lender, Issuing Bank or as one of the Majority Lenders or Required Lenders, as applicable. The Person serving as the Administrative Agent or the Collateral Agent, as applicable, and their respective Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust or other business with, the Borrower, any Subsidiary or any Affiliate of any of the foregoing as if such Person was not acting as the Administrative Agent or the Collateral Agent, as applicable, and without any duty to account therefor to the Lenders or the Issuing Banks.

Section 11.05 **Successor Agents**.

(a) Each of the Administrative Agent and the Collateral Agent may resign at any time by giving 30 days' prior written notice thereof to the Lenders, the Issuing Banks and the Borrower, whether or not a successor Administrative Agent or successor Collateral Agent has been appointed. At any time the Administrative Agent or the Collateral Agent, as the case may be, is a Defaulting Lender, either the Majority Lenders or the Borrower may replace the Administrative Agent and the Collateral Agent at any time by giving 30 days' prior written notice thereof to the Administrative Agent, the Collateral Agent, the Lenders, the Issuing Banks and (if applicable) the Borrower. Upon any such resignation or removal, the Majority Lenders shall have the right, subject to the consent of the Borrower (so long as no Event of Default under Section 10.01(a) or Section 10.01(i) is continuing), to appoint a successor Administrative Agent and a successor Collateral Agent. If no successor Agent shall have been so appointed by the Majority Lenders, and shall have accepted such appointment, within 30 days after the applicable notice referred to above in this paragraph (a), then the retiring or replaced Agent may, on behalf of the Lenders and the Issuing Banks, appoint a successor Agent, which shall be a bank with an office in New York, New York or an Affiliate of any such bank. In either case, such appointment shall be subject to the prior written approval of the Borrower (which approval may not be unreasonably withheld and shall not be required while an Event of Default has occurred and is continuing). Upon the acceptance of any appointment as Administrative Agent by a successor Administrative Agent or any appointment as Collateral Agent by a successor Collateral Agent, as applicable, such successor Administrative Agent or such Collateral Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring or replaced Administrative Agent or Collateral Agent, as the case may be. Upon the acceptance of appointment as Administrative Agent by a successor Administrative Agent or the acceptance of appointment as Collateral Agent by a successor Collateral Agent, the retiring or replaced Administrative Agent or Collateral Agent, as the case may be, shall be discharged from its duties and obligations under this Agreement and the

other Loan Documents. Prior to any retiring or replaced Administrative Agent's or Collateral Agent's resignation or replacement hereunder as Administrative Agent or Collateral Agent, as the case may be, the retiring or replaced Administrative Agent or Collateral Agent shall take such action as may be reasonably necessary to assign to the successor Administrative Agent or successor Collateral Agent in its rights as Administrative Agent or Collateral Agent under the Loan Documents, including the execution and filing or recording of such financing statements, or amendments thereto, and such other instruments or notices, as may be necessary or desirable or as the Majority Lenders may request in order to continue the perfection of the Liens granted or purported to be granted by the Security Instruments. The fees payable by the Borrower (following the effectiveness of such appointment) to the successor Administrative Agent and the successor Collateral Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor.

(b) Notwithstanding paragraph (a) of this Section, in the event no successor Administrative Agent or successor Collateral Agent shall have been so appointed and shall have accepted such appointment within 30 days after the applicable notice referred to in the first or second sentence of paragraph (a) above, the retiring Administrative Agent or the retiring Collateral Agent may give notice of the effectiveness of its resignation to the Lenders, the Issuing Banks and the Borrower, whereupon, on the date of effectiveness of such resignation stated in such notice, (i) the retiring or replaced Administrative Agent or Collateral Agent, as the case may be, shall be discharged from its duties and obligations hereunder and under the other Loan Documents; *provided* that, solely for purposes of maintaining any security interest granted to the Collateral Agent under any Security Instrument for the benefit of the Secured Parties, the retiring or replaced Collateral Agent shall continue to be vested with such security interest as collateral agent for the benefit of the Secured Parties, and continue to be entitled to the rights set forth in such Security Instrument and Loan Document, and, in the case of any Collateral in the possession of the Collateral Agent, shall continue to hold such Collateral, in each case until such time as a successor Collateral Agent is appointed and accepts such appointment in accordance with this Section (it being understood and agreed that the retiring or replaced Collateral Agent shall have no duty or obligation to take any further action under any Security Instrument, including any action required to maintain the perfection of any such security interest), and (ii) the Majority Lenders shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent; *provided* that (A) all payments required to be made hereunder or under any other Loan Document to the Administrative Agent for the account of any Person other than the Administrative Agent shall be made directly to such Person and (B) all notices and other communications required or contemplated to be given or made to the Administrative Agent shall directly be given or made to each Lender and each Issuing Bank. Following the effectiveness of the Administrative Agent's or the Collateral Agent's resignation or removal from its capacity as such, the provisions of this Article and Section 12.03, as well as any exculpatory, reimbursement and indemnification provisions set forth in any other Loan Document, shall continue in effect for the benefit of such retiring or replaced Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or replaced Administrative Agent or Collateral Agent, as the case may be, was acting as Administrative Agent or Collateral Agent and in respect of the matters referred to in the proviso under clause (i) above.

Section 11.06 **Acknowledgements of Lenders and Issuing Banks**.

(a) Each Lender and each Issuing Bank represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility, (ii) it is engaged in making, acquiring or holding commercial loans and in providing other facilities set forth herein as may be applicable to such Lender or Issuing Bank, in each case in the ordinary course of business, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument (and each Lender and each Issuing Bank agrees not to assert a claim in contravention of the foregoing), (iii) it has, independently and without reliance upon the Administrative Agent, the Collateral Agent, any Arranger or any other Lender or Issuing Bank, or any of the Related Parties of any of the foregoing, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire or hold Loans hereunder and (iv) it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such Issuing Bank, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities. Each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent, the Collateral Agent, any Arranger or any other Lender or Issuing Bank, or any of the Related Parties of any of the foregoing, and based on such documents and information (which may contain material, non-public information within the meaning of the United States securities laws concerning the Borrower and its Affiliates) as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

(b) Each Lender, by delivering its signature page to this Agreement on the Effective Date, or delivering its signature page to an Assignment and Assumption or any other Loan Document pursuant to which it shall become a Lender hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Effective Date.

Section 11.07 **Collateral Matters**.

(a) Except with respect to the exercise of setoff rights in accordance with Section 12.08 or with respect to a Secured Party's right to file a proof of claim in an insolvency proceeding, no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce any guarantee of the Obligations, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Collateral Agent on behalf of the Secured Parties in accordance with the terms thereof.

(b) In furtherance of the foregoing and not in limitation thereof, no Lender Treasury Management Agreements nor Secured Swap Agreement will create (or be deemed to create) in favor of any Secured Party that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of any Credit Party under any Loan Document. By accepting the benefits of the Collateral, each Secured Party that is a Treasury

Management Lender or a Secured Swap Party shall be deemed to have appointed the Administrative Agent to serve as administrative agent and Collateral Agent to serve as collateral agent under the Loan Documents and agreed to be bound by the Loan Documents as a Secured Party thereunder, subject to the limitations set forth in this paragraph.

(c) [Reserved].

(d) [Reserved].

(e) Neither the Administrative Agent nor the Collateral Agent shall be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon or any certificate prepared by any Credit Party in connection therewith, nor shall the Collateral Agent be responsible or liable to the Lenders or any other Secured Party for any failure to monitor or maintain any portion of the Collateral.

(f) The Secured Parties hereby agree that (w) the Collateral Agent's entry into any Acceptable Intercreditor Agreement, any Acceptable Collateral Trust Agreement and any Acceptable Hedge Intercreditor Agreement is reasonable and consent to such Acceptable Intercreditor Agreement, any such Acceptable Collateral Trust Agreement and any such Acceptable Hedge Intercreditor Agreement and to the Collateral Agent's execution thereof, (x) the Collateral Agent is authorized, without any further consent of any Secured Party, to enter into or amend any other intercreditor agreement or collateral trust agreement with the agent or other representatives of the holders of Indebtedness that is permitted to be secured by a Lien on the Collateral that is permitted under this Agreement, in each case for the purpose of adding the holders of such Indebtedness (or their representative) as a party thereto and otherwise causing such Indebtedness to be subject thereto (it being understood that any such amendment, amendment and restatement or supplement may make such other changes to the applicable intercreditor agreement or the applicable collateral trust agreement as, in the good faith determination of the Collateral Agent, are required to effectuate the foregoing), (y) the Collateral Agent may rely exclusively on a certificate of a Responsible Officer of the Borrower as to whether any such other Liens are permitted and (z) any such intercreditor agreement or collateral trust agreement referred to in clause (x) above and any Acceptable Intercreditor Agreement, any Acceptable Collateral Trust Agreement and any Acceptable Hedge Intercreditor Agreement, entered into by the Collateral Agent, shall be binding on the Secured Parties.

Section 11.08 **Credit Bidding**. The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Majority Lenders, to credit bid all or any portion of the Obligations (including by accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, or any similar laws in any other jurisdictions to which a Credit Party is subject, or (b) at any other sale, foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable law. In connection with any such credit bid and purchase, the Obligations owed to the Secured

Parties shall be entitled to be, and shall be, credit bid by the Administrative Agent at the direction of the Majority Lenders on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that shall vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) for the asset or assets so purchased (or for the equity interests or debt instruments of the acquisition vehicle or vehicles that are issued in connection with such purchase). In connection with any such bid, (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles and to assign any successful credit bid to such acquisition vehicle or vehicles, (ii) each of the Secured Parties' ratable interests in the Obligations which were credit bid shall be deemed without any further action under this Agreement to be assigned to such vehicle or vehicles for the purpose of closing such sale, (iii) the Administrative Agent shall be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (*provided* that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or equity interests thereof, shall be governed, directly or indirectly, by, and the governing documents shall provide for, control by the vote of the Majority Lenders or their permitted assignees under the terms of this Agreement or the governing documents of the applicable acquisition vehicle or vehicles, as the case may be, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Majority Lenders contained in Section 12.02 of this Agreement), (iv) the Administrative Agent on behalf of such acquisition vehicle or vehicles shall be authorized to issue to each of the Secured Parties, ratably on account of the relevant Obligations which were credit bid, interests, whether as equity, partnership interests, limited partnership interests or membership interests, in any such acquisition vehicle and/or debt instruments issued by such acquisition vehicle, all without the need for any Secured Party or acquisition vehicle to take any further action, and (v) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of Obligations credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Secured Parties *pro rata* with their original interest in such Obligations and the equity interests and/or debt instruments issued by any acquisition vehicle on account of such Obligations shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action. Notwithstanding that the ratable portion of the Obligations of each Secured Party are deemed assigned to the acquisition vehicle or vehicles as set forth in clause (ii) above, each Secured Party shall execute such documents and provide such information regarding the Secured Party (and/or any designee of the Secured Party which will receive interests in or debt instruments issued by such acquisition vehicle) as the Administrative Agent may reasonably request in connection with the formation of any acquisition vehicle, the formulation or submission of any credit bid or the consummation of the transactions contemplated by such credit bid.

Section 11.09 **Certain ERISA Matters**.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, the Collateral Agent, and each Arranger and their respective Affiliates, and

not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of the Plan Asset Regulations) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that none of the Administrative Agent, or any Arranger or any of their respective Affiliates is a fiduciary with respect to the Collateral or the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

(c) The Administrative Agent, the Collateral Agent and each Arranger hereby informs the Lenders that each such Person is not undertaking to provide investment advice or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person

or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments, this Agreement and any other Loan Documents (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

ARTICLE XII
MISCELLANEOUS

Section 12.01 **Notices**.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to Section 12.01(b)), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, to any party hereto at its address set forth on Schedule 12.01, and if to any Lender that becomes a Lender after the Effective Date, to it at its address (or facsimile number) set forth in its Administrative Questionnaire. Notices delivered through Approved Electronic Platforms, to the extent provided in clause (b) below, shall be effective as provided in said clause (b).

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by Approved Electronic Platforms pursuant to procedures approved by the Administrative Agent; *provided* that the foregoing shall not apply to notices pursuant to Articles II, III, IV or V, unless otherwise agreed by the Administrative Agent, Collateral Agent and the applicable Lender, if any, in writing. The Administrative Agent, Collateral Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided* that approval of such procedures may be limited to particular notices or communications.

(c) Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

(d) The Administrative Agent, Collateral Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. All telephonic notices to and telephonic communications with the Administrative Agent or Collateral Agent may be recorded by such Agent, and each of the parties hereby consents to such recording.

Section 12.02 **Waivers; Amendments**.

(a) No failure on the part of the Administrative Agent, Collateral Agent, the Issuing Bank or any Lender to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege, or any abandonment or discontinuance of steps to enforce such right, power or privilege, under any of the Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any of the Loan Documents preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of the Administrative Agent, Collateral Agent, any other Agent, the Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by Section 12.02(b), and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, the Collateral Agent, any other Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Subject to Section 2.06(c)(ii)(G) and Section 3.03, neither this Agreement nor any provision hereof nor any other Loan Document nor any provision thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Majority Lenders or by the Borrower and the Administrative Agent with the consent of the Majority Lenders; *provided* that no such agreement shall:

(i) increase the Loans or Commitments (or extend the expiry date thereof) of any Lender without the written consent of such Lender (it being understood that a waiver of any condition precedent or the waiver of any default, event of default or mandatory prepayment shall not constitute any increase or extension of any Loan or Commitment of any Lender);

(ii) increase the Borrowing Base without the written consent of each Tranche A Lender (other than any Defaulting Lender) (or, if all Tranche A Commitments have been terminated and all Obligations with respect to Tranche A Loans have been repaid in full, the Tranche B Lenders); *provided* that a Scheduled Redetermination and the delivery of a Reserve Report may be postponed by the Majority Lenders;

(iii) (A) decrease or maintain the Borrowing Base without the consent of the Required Lenders; *provided* that a Scheduled Redetermination and the delivery of a Reserve Report may be postponed by the Majority Lenders; *provided further* that it is understood that any waiver (or amendment or modification that would have the effect of a waiver) to the Borrowing Base Adjustment Provisions shall require the consent of the Required Lenders or (B) reduce the percentages set forth in Section 8.14(a) to less than 85% without the consent of the Required Lenders;

(iv) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, or reduce any other

Obligations hereunder or under any other Loan Document, without the written consent of each Lender directly and adversely affected thereby, except in connection with any amendment or waiver of the applicability of any post-default increase in interest rates, which shall be effective with the written consent of the Majority Lenders;

(v) postpone the scheduled date of payment or prepayment of the principal amount of any Loan or LC Disbursement (other than with respect to prepayments to be made pursuant to Section 3.04(c)(ii)) (solely in respect of a Borrowing Base adjustment pursuant to Section 2.07(h), Section 3.04(c)(iii) or Section 3.04(c)(v)), or any interest thereon, or any fees payable hereunder, or any other Obligations hereunder or under any other Loan Document, or reduce the amount of, waive or excuse any such payment, or postpone or extend the Termination Date or the Maturity Date (other than any extension thereof for administrative convenience) without the written consent of each Lender directly and adversely affected thereby (it being understood that a waiver of any condition precedent or the waiver of any default, event of default or mandatory prepayment shall not constitute an extension of any Commitment by any Lender, and such waivers shall be effective with the written consent of the Majority Lenders);

(vi) change Section 4.01(b), Section 4.01(c), the definition of "Applicable Percentage" or any other term or condition hereof in a manner that would alter the *pro rata* sharing of payments required thereby, without the written consent of each Lender directly and adversely affected thereby;

(vii) waive or amend Section 10.02(c), without the written consent of each Lender directly and adversely affected thereby;

(viii) release all or substantially all of the value of the Guaranty and Collateral Agreement (except as set forth in the Guaranty and Collateral Agreement or pursuant to a transaction permitted by this Agreement), or release all or substantially all of the Collateral (except as set forth in the Guaranty and Collateral Agreement or pursuant to a transaction permitted by this Agreement), without the written consent of each Lender;

(ix) no such agreement shall amend, modify or waive this Agreement (including, without limitation, Section 10.02(c)) or any other Loan Document so as to alter the ratable treatment of Obligations arising under the Loan Documents and Obligations arising under Secured Swap Agreements or the definition of "Secured Swap Party", "Approved Counterparty", "Secured Parties", "Swap Agreement", "Secured Swap Agreement", "Secured Swap Obligations", "Obligations" or "Secured Obligations" (as such terms (or terms with similar meanings) are defined in this Agreement or any applicable Loan Document), in each case in a manner adverse to any Secured Swap Party without the written consent of any such Secured Swap Party; or

(x) change any of the provisions of this Section 12.02(b) or the definitions of "Required Lenders" or "Majority Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or under any other Loan Documents or make any determination or grant any consent hereunder or any other Loan Documents, without the written consent of each Lender; *provided further* that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Collateral Agent, any other Agent or the Issuing Bank hereunder or under any other

Loan Document without the prior written consent of the Administrative Agent, the Collateral Agent, such other Agent or the Issuing Bank, as the case may be. Notwithstanding the foregoing, (1) any supplement to Schedule 7.14 shall be effective simply by delivering to the Administrative Agent a supplemental schedule clearly marked as such and, upon receipt, the Administrative Agent will promptly deliver a copy thereof to the Lenders, (2) the Borrower and the Administrative Agent and/or the Collateral Agent may amend this Agreement or any other Loan Document without the consent of the Lenders in order to correct, amend or cure any ambiguity, inconsistency, omission or defect or correct any typographical error or other manifest error in any Loan Document, and (3) the Administrative Agent and/or the Collateral Agent and the Borrower may, without the consent of any Lender, enter into any amendment, modification or waiver of this Agreement or any other Loan Document or enter into any agreement or instrument to add additional Guarantors as contemplated in Section 8.14(b) or to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or Property to become Collateral to secure the Obligations for the benefit of the Lenders or as required by any Requirement of Law to give effect to, protect or otherwise enhance the rights or benefits of any Lender under the Loan Documents. Notwithstanding the foregoing, (i) Schedules 1.02(b) and 1.02(d) may be amended by the Borrower and Administrative Agent to add an Issuing Bank, remove an Issuing Bank or modify the LC Issuance Limit of any Issuing Bank; *provided* that the LC Commitment of any Issuing Bank may be increased with only the consent of the Borrower, the Administrative Agent and such Issuing Bank (and the consent of the Majority Lenders shall not be required) and (ii) amendment and waivers of the Financial Performance Covenants (or any of the financial definitions included (and for the purposes of) the Financial Performance Covenants will require only the consent of the Majority Lenders, and no other consents or approvals shall be required).

(c) Notwithstanding anything to the contrary contained in any Loan Documents, the Commitment of any Defaulting Lender may not be increased without its consent (it being understood, for avoidance of doubt, that no Defaulting Lender shall have any right to approve or disapprove any increase, decrease or reaffirmation of the Borrowing Base) and the Administrative Agent may with the consent of, the Borrower and the non-Defaulting Lenders amend, modify or supplement the Loan Documents to effectuate an increase to the Borrowing Base where such Defaulting Lender does not consent to an increase to its Commitment, including not increasing the Borrowing Base by the portion thereof applicable to the Defaulting Lender.

Section 12.03 **Expenses, Indemnity; Damage Waiver**.

(a) The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, the Collateral Agent, the Arrangers and their respective Affiliates (including the reasonable fees, charges and disbursements of counsel and other outside consultants for the Administrative Agent, the Collateral Agent, and the Arrangers, the reasonable travel, photocopy, mailing, courier, telephone and other similar expenses, and the cost of surveys and appraisals within ten (10) days after written demand thereof; *provided* that, in the case of legal counsel, such fees charges and disbursements shall be limited to (A) the actual reasonable and documented out-of-pocket fees, disbursements and other charges of a single outside counsel to the Administrative Agent, the Collateral Agent, the Arrangers and their respective Affiliates, taken as a whole, and (if necessary) one local counsel in each relevant material jurisdiction to the Administrative Agent, the Collateral Agent, the Arrangers and their respective Affiliates, taken as a whole, and (B) solely in the event of an actual or perceived conflict of interest,

one additional outside counsel (and, if necessary one local counsel in each relevant material jurisdiction) to the Administrative Agent, the Collateral Agent, the Arrangers and their respective Affiliates) in connection with the Transactions, the Chapter 11 Cases, the syndication of the credit facility provided for herein, the preparation, negotiation, execution, delivery and administration (both before and after the execution hereof and including advice of counsel to the Administrative Agent and the Collateral Agent as to the rights and duties of the Administrative Agent, the Collateral Agent and the Lenders with respect thereto) of this Agreement and the other Loan Documents and any amendments, modifications or waivers of or consents related to the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all costs, expenses, assessments and other charges incurred by the Administrative Agent and the Collateral Agent (or any sub-agent of such Agents) or any Lender in connection with any filing, registration, recording or perfection of any security interest contemplated by this Agreement or any Security Instrument or any other document referred to therein, (iii) all reasonable and documented out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, and (iv) all reasonable out-of-pocket expenses incurred by the Administrative Agent, the Collateral Agent, each Issuing Bank or any Lender within ten (10) days after written demand thereof, including the fees, charges and disbursements of counsel for the Administrative Agent, the Collateral Agent, any Issuing Bank or any Lender and any consultants or advisors (limited to one financial advisor and one investment banker) for the Administrative Agent, the Collateral Agent and the Lenders, taken as a whole, in connection with the enforcement or protection of its rights in connection with this Agreement or any other Loan Document, including its rights under this Section 12.03, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses (subject to the limitations in this clause (iv)) incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) **THE BORROWER SHALL INDEMNIFY THE ADMINISTRATIVE AGENT AND THE COLLATERAL AGENT (AND ANY SUB-AGENT OF SUCH AGENTS), THE ARRANGERS, EACH ISSUING BANK AND EACH LENDER, AND EACH RELATED PARTY OF ANY OF THE FOREGOING PERSONS (EACH SUCH PERSON BEING CALLED AN "INDEMNITEE") AGAINST, AND DEFEND AND HOLD EACH INDEMNITEE HARMLESS FROM, ANY AND ALL LOSSES, CLAIMS, DAMAGES, PENALTIES, LIABILITIES AND RELATED EXPENSES, INCLUDING THE REASONABLE AND DOCUMENTED FEES, CHARGES AND DISBURSEMENTS OF ANY COUNSEL FOR ANY INDEMNITEE** (BUT LIMITED IN THE CASE OF LEGAL FEES AND EXPENSES TO ACTUAL REASONABLE AND DOCUMENTED OUT-OF-POCKET FEES, DISBURSEMENTS AND OTHER CHARGES OF ONE OUTSIDE COUNSEL TO ALL INDEMNITEES TAKEN AS A WHOLE AND, IF NECESSARY, ONE LOCAL COUNSEL FOR ALL INDEMNITEES TAKEN AS A WHOLE IN EACH RELEVANT MATERIAL JURISDICTION, AND IN THE CASE OF AN ACTUAL OR PERCEIVED CONFLICT OF INTEREST, ONE ADDITIONAL COUNSEL AND (IF REASONABLY NECESSARY) ONE LOCAL COUNSEL IN EACH RELEVANT MATERIAL JURISDICTION TO THE AFFECTED INDEMNITEES SIMILARLY SITUATED), **INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF (i) THE EXECUTION OR DELIVERY OF THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ANY AGREEMENT OR**

INSTRUMENT CONTEMPLATED HEREBY OR THEREBY, (ii) THE PERFORMANCE BY THE PARTIES HERETO OR THE PARTIES TO ANY OTHER LOAN DOCUMENT OF THEIR RESPECTIVE OBLIGATIONS HEREUNDER OR THEREUNDER OR THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY OR BY ANY OTHER LOAN DOCUMENT, (iii) THE FAILURE OF THE BORROWER OR ANY RESTRICTED SUBSIDIARY TO COMPLY WITH THE TERMS OF ANY LOAN DOCUMENT, INCLUDING THIS AGREEMENT, (iv) ANY INACCURACY OF ANY REPRESENTATION OR ANY BREACH OF ANY WARRANTY OR COVENANT OF THE BORROWER OR ANY GUARANTOR SET FORTH IN ANY OF THE LOAN DOCUMENTS OR ANY INSTRUMENTS, DOCUMENTS OR CERTIFICATIONS DELIVERED IN CONNECTION THEREWITH, (v) ANY LOAN OR LETTER OF CREDIT OR THE USE OF THE PROCEEDS THEREFROM, INCLUDING ANY REFUSAL BY THE ISSUING BANK TO HONOR A DEMAND FOR PAYMENT UNDER A LETTER OF CREDIT IF THE DOCUMENTS PRESENTED IN CONNECTION WITH SUCH DEMAND DO NOT STRICTLY COMPLY WITH THE TERMS OF SUCH LETTER OF CREDIT, OR ANY OTHER ASPECT OF THE LOAN DOCUMENTS, (vi) THE TRANSACTIONS, (vii) ANY ASSERTION THAT THE LENDERS WERE NOT ENTITLED TO RECEIVE THE PROCEEDS RECEIVED PURSUANT TO THE SECURITY INSTRUMENTS, (viii) ANY LIABILITY UNDER ENVIRONMENTAL LAW WITH RESPECT TO THE BORROWER OR ANY SUBSIDIARY OR ANY OF THEIR PROPERTIES OR OPERATIONS, INCLUDING WITH RESPECT TO THE PRESENCE, GENERATION, STORAGE, RELEASE, THREATENED RELEASE, USE, TRANSPORT, DISPOSAL, ARRANGEMENT OF DISPOSAL OR TREATMENT OF HAZARDOUS MATERIALS ON OR AT ANY OF THEIR PROPERTIES, (ix) THE BREACH OR NON¬COMPLIANCE BY THE BORROWER OR ANY SUBSIDIARY WITH ANY ENVIRONMENTAL LAW APPLICABLE TO THE BORROWER OR ANY SUBSIDIARY, (x) THE PAST OWNERSHIP BY THE BORROWER OR ANY SUBSIDIARY OF ANY OF THEIR PROPERTIES OR PAST ACTIVITY ON ANY OF THEIR PROPERTIES WHICH, THOUGH LAWFUL AND FULLY PERMISSIBLE AT THE TIME, COULD RESULT IN PRESENT LIABILITY, (xi) THE PRESENCE, USE, RELEASE, STORAGE, TREATMENT, DISPOSAL, GENERATION, THREATENED RELEASE, TRANSPORT, ARRANGEMENT FOR TRANSPORT OR ARRANGEMENT FOR DISPOSAL OF HAZARDOUS MATERIALS ON OR AT ANY OF THE PROPERTIES OWNED OR OPERATED BY THE BORROWER OR ANY SUBSIDIARY OR ANY ACTUAL OR ALLEGED PRESENCE OR RELEASE OF HAZARDOUS MATERIALS ON OR FROM ANY PROPERTY OWNED OR OPERATED BY THE BORROWER OR ANY OF THE BORROWER'S SUBSIDIARIES, (xii) ANY LIABILITY UNDER ENVIRONMENTAL LAWS RELATED IN ANY WAY TO THE BORROWER OR ANY OF THE BORROWER'S SUBSIDIARIES, OR ANY OTHER ENVIRONMENTAL, HEALTH OR SAFETY CONDITION IN CONNECTION WITH THE LOAN DOCUMENTS, OR (xiii) ANY ACTUAL OR THREATENED CLAIM, LITIGATION, INVESTIGATION OR PROCEEDING RELATING TO ANY OF THE FOREGOING, AND REGARDLESS OF WHETHER ANY INDEMNITEE IS A PARTY THERETO OR WHETHER BROUGHT BY THE BORROWER, ANY GUARANTOR OR ANY OTHER PARTY, AND SUCH INDEMNITY SHALL EXTEND TO EACH INDEMNITEE NOTWITHSTANDING THE SOLE OR CONCURRENT NEGLIGENCE

OF EVERY KIND OR CHARACTER WHATSOEVER, WHETHER ACTIVE OR PASSIVE, WHETHER AN AFFIRMATIVE ACT OR AN OMISSION, INCLUDING WITHOUT LIMITATION, ALL TYPES OF NEGLIGENT CONDUCT IDENTIFIED IN THE RESTATEMENT (SECOND) OF TORTS OF ONE OR MORE OF THE INDEMNITEES OR BY REASON OF STRICT LIABILITY IMPOSED WITHOUT FAULT ON ANY ONE OR MORE OF THE INDEMNITEES; *PROVIDED* THAT SUCH INDEMNITY SHALL NOT, AS TO ANY INDEMNITEE, BE AVAILABLE TO THE EXTENT THAT SUCH LOSSES, CLAIMS, DAMAGES, LIABILITIES OR RELATED EXPENSES ARE DETERMINED BY A COURT OF COMPETENT JURISDICTION BY FINAL AND NONAPPEALABLE JUDGMENT TO HAVE RESULTED FROM (I) THE BAD FAITH, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNITEE AND (II) DISPUTES SOLELY AMONG INDEMNITEES THAT DO NOT INVOLVE ANY ACTION OR OMISSION BY ANY CREDIT PARTY, OR ANY SUBSIDIARY THEREOF AND THAT ARE NOT RELATED TO A CLAIM AGAINST THE ARRANGERS, THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT, THE ISSUING BANKS OR ANY OF THEIR AFFILIATES IN THEIR RESPECTIVE CAPACITIES OR IN FULFILLING THEIR RESPECTIVE ROLES AS ARRANGERS, THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT OR ISSUING BANKS OR ANY SIMILAR ROLE UNDER THIS AGREEMENT.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent (or any sub-agent thereof), the Collateral Agent (or any sub-agent thereof), the Arrangers or any Issuing Bank under Section 12.03(a) or (b) or any Related Party of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Collateral Agent (or any sub-agent thereof), the Arrangers or such Issuing Bank, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any sub-agent thereof), the Collateral Agent (or any sub-agent thereof),the Arrangers or such Issuing Bank in its capacity as such.

(d) All amounts due under this Section 12.03 (other than the amounts due under Section 12.03(a)) shall be payable not later than thirty (30) days after written demand therefor setting forth such amounts in reasonable detail.

(e) Each party's obligations under this Section 12.03 shall survive the termination of the Loan Documents and payment of the obligations hereunder.

(f) Section 12.03 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, or damages arising from a non-Tax claim.

(g) Notwithstanding the foregoing, each Indemnitee shall be obligated to refund and return any and all amounts paid by the Borrower to such Indemnitee for fees, expenses or damages to the extent such Indemnitee is not entitled to payment of such amounts in accordance with this Section 12.03.

Section 12.04 **Successors and Assigns; No Third Party Beneficiaries**.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), except that (other than as permitted pursuant to Section 9.09), the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Administrative Agent and each Lender and no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 12.04. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in Section 12.04(c)) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Collateral Agent, the Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement, and except for the foregoing Persons there are no third party beneficiaries to this Agreement.

(b) (i) Subject to the conditions set forth in Section 12.04(b)(ii), any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of:

(A) the Borrower; *provided* that (i) no consent of the Borrower shall be required if such assignment is to a Lender, an Affiliate of a Lender, an Approved Fund or if an Event of Default (i) has occurred and is continuing and (ii) if the Borrower has not responded within ten (10) Business Days after the delivery of any such request for a consent, such consent shall be deemed to have been given (it being understood that the Borrower shall have the right to withhold its consent (notwithstanding the provisions of the foregoing parenthetical phrase in clause 12.04(b)(i)), to any assignment (x) if, in order for such assignment to comply with applicable Requirements of Law, the Borrower would be required to obtain the consent of or make any filing or registration with, any Governmental Authority or (y) with respect to an assignment of Commitments to an entity other than a financial institution customarily engaged in the business of making loans in the oil and gas industry or a commercial bank); and

(B) the Administrative Agent and each Issuing Bank (with respect to Tranche A Loans and Commitments); *provided* that no consent of the Administrative Agent shall be required for an assignment to an assignee that is a Lender, an Affiliate of a Lender or an Approved Fund immediately prior to giving effect to such assignment.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than $15,000,000 (and shall be in increments of $1,000,000 above such amount) unless each of the Borrower and

the Administrative Agent otherwise consent; provided, that no such consent of the Borrower shall be required if an Event of Default under Section 10.01(a), Section 10.01(b), Section 10.01(h) or Section 10.01(i) has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption or to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, in each case, together with a processing and recordation fee of $3,500; *provided* that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment;

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire;

(E) no such assignment shall be made to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person) or the Borrower or any of the Borrower's Affiliates or Subsidiaries;

(F) no such assignment shall be made to a Defaulting Lender or any of its subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute a Defaulting Lender or a Subsidiary of a Defaulting Lender.

(iii) Subject to Section 12.04(b)(iv) and the acceptance and recording thereof by the Administrative Agent, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Section 5.01, Section 5.02, Section 5.03 and Section 12.03 with respect to facts and circumstances occurring prior to the effective date of such assignment; *provided*, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 12.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 12.04(c).

(iv) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names, addresses and lending offices of the Lenders, and the Commitment of, and principal amount of the Loans and of the LC

Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent, the Issuing Bank and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice. In connection with any changes to the Register, if necessary, the Administrative Agent will reflect the revisions on Annex I and forward a copy of such revised Annex I to the Borrower, the Issuing Bank and each Lender. This Section 12.04(b)(iv) and Section 12.04(c) shall be construed so that all Loans are at all times maintained in "registered form" within the meaning of sections 163(f), 871(h)(2) and 881(c) (2) of the Code and any related Treasury Regulations (or any other relevant or successor provisions of the Code or such Treasury Regulations).

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Section 12.04(b) and any written consent to such assignment required by Section 12.04(b), the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this Section 12.04(b).

(c) Any Lender may, without the consent of or notice to the Borrower, the Administrative Agent or the Issuing Bank, sell participations to one or more banks or other entities other than an Ineligible Person (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); *provided* that:

(i) such Lender's obligations under this Agreement shall remain unchanged, such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, the Borrower, the Administrative Agent, the Collateral Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement;

(ii) such Participant must first agree to comply with Section 12.11;

(iii) no such participation may be sold to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person), a Defaulting Lender or the Borrower or an Affiliate or a Subsidiary of the Borrower; and

(iv) any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender retains the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement, except

that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 12.02(b) that affects such Participant.

Each such Participant shall be entitled to the benefits of Section 5.01, 5.02 and 5.03 and shall be subject to the requirements of and limitations in Section 5.01, 5.02, 5.03 and 5.05 (it being understood that the documentation required under Section 5.03(g) shall be delivered to the participating Lender, *i.e.*, the Lender selling such participation) to the same extent as if such Participant were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; *provided* that such Participant shall not be entitled at any time to receive any greater payment under Section 5.01 or 5.03, with respect to any participation, than its participating Lender would have been entitled to receive at such time, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. A Participant that would be a Non-U.S. Lender if it were a Lender shall not be entitled to the benefits of Section 5.03 unless the Borrower is notified of the participation sold to such Participant prior to such sale and such Participant complies with Section 5.03 as though it were a Lender. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 5.05 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 12.08 as though it were a Lender; *provided* that such Participant agrees to be subject to Section 4.01(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitment, Loans or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank having jurisdiction over such Lender, and this Section 12.04 shall not apply to any such pledge or assignment of a security interest; *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) Notwithstanding any other provisions of this Section 12.04, no transfer or assignment of the interests or obligations of any Lender or any grant of participations therein shall

be permitted if such transfer, assignment or grant would require any Credit Party to file a registration statement with the SEC or to qualify the Loans under the "Blue Sky" laws of any state.

Section 12.05 **Survival; Revival; Reinstatement**.

(a) All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Collateral Agent, any other Agent, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding (or any drawing is pending on any Letter of Credit) and so long as the Commitments have not expired or terminated. The provisions of Section 5.01, Section 5.02, Section 5.03 and Section 12.03 and Article XI shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement, any other Loan Document or any provision hereof or thereof.

(b) To the extent that any payments on the Obligations or proceeds of any Collateral are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver or other Person under any bankruptcy law, common law or equitable cause, then to such extent, the Obligations so satisfied shall be revived and continue as if such payment or proceeds had not been received and the Administrative Agent's, the Collateral Agent's and the Lenders' Liens, security interests, rights, powers and remedies under this Agreement and each Loan Document shall continue in full force and effect. In such event, each Loan Document shall be automatically reinstated and the Borrower shall take such action as may be reasonably requested by the Administrative Agent, the Collateral Agent and the Lenders to effect such reinstatement.

Section 12.06 **Counterparts; Integration; Effectiveness**.

(a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract.

(b) This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent and/or the Collateral Agent constitute the entire contract among the parties relating to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof and thereof. **THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES HERETO AND THERETO AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

(c) Except as provided in Section 6.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of (i) this Agreement, (ii) any other Loan Document and/or (iii) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 12.01), certificate, request, statement, disclosure or authorization related to this Agreement, any other Loan Document and/or the transactions contemplated hereby and/or thereby (each an "Ancillary Document") that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Loan Document or such Ancillary Document, as applicable. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement, any other Loan Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; *provided* that nothing herein shall require the Administrative Agent to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; *provided further*, without limiting the foregoing, (x) to the extent the Administrative Agent has agreed to accept any Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of the Borrower or any other Credit Party without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (y) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, the Borrower and each Credit Party hereby (A) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders, the Borrower and the Credit Parties, Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Loan Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, (B) the Administrative Agent and each of the Lenders may, at its option, create one or more copies of this Agreement, any other Loan Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (C) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Loan Document and/or such Ancillary Document, respectively, including with respect to any signature

pages thereto and (D) waives any claim against the Administrative Agent, any Arranger, any Lender, any Issuing Bank, or any of their Related Parties for any liabilities arising solely from the Administrative Agent's and/or any Lender's reliance on or use of Electronic Signatures and/or transmissions by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any liabilities arising as a result of the failure of the Borrower and/or any Credit Party to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

Section 12.07 **Severability**. Any provision of this Agreement or any other Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof or thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 12.08 **Right of Setoff**. If an Event of Default shall have occurred and be continuing, each Lender and each Issuing Bank is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency except such deposits used for trust, payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of any employees of the Credit Parties) at any time held and other obligations (in whatever currency, and of whatsoever kind, including obligations under Swap Agreements) at any time owing by such Lender or such Issuing Bank to or for the credit or the account of any Credit Party against any and all of the obligations of any Credit Party owing to such Lender now or hereafter existing under this Agreement or any other Loan Document, upon any such amount becoming due and payable by the Borrower under any Loan Document (whether at the stated maturity, by acceleration or otherwise) irrespective of whether such obligations may be owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such Indebtedness. The rights of each Lender and each Issuing Bank under this Section 12.08 are in addition to other rights and remedies (including other rights of setoff) which such Lender or such Issuing Bank may have. Each Lender and each Issuing Bank agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

Section 12.09 **GOVERNING LAW; JURISDICTION; CONSENT TO SERVICE OF PROCESS**.

(a) THIS AGREEMENT AND THE NOTES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THE LOAN DOCUMENTS SHALL BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY, AND CITY OF NEW YORK, BOROUGH OF MANHATTAN, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY HEREBY ACCEPTS FOR ITSELF AND (TO THE EXTENT PERMITTED BY LAW) IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS;

PROVIDED, THAT NOTHING CONTAINED HEREIN OR IN ANY OTHER LOAN DOCUMENT WILL PREVENT ANY PARTY FROM BRINGING ANY ACTION TO ENFORCE ANY AWARD OR JUDGMENT OR EXERCISE ANY RIGHT UNDER THE LOAN DOCUMENTS IN ANY OTHER FORUM IN WHICH JURISDICTION CAN BE ESTABLISHED. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING, WITHOUT LIMITATION, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM *NON CONVENIENS*, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS.

(c) EACH PARTY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO IT AT THE ADDRESS SPECIFIED IN SECTION 12.01 OR SUCH OTHER ADDRESS AS IS SPECIFIED PURSUANT TO SECTION 12.01 (OR ITS ASSIGNMENT AND ASSUMPTION), SUCH SERVICE TO BECOME EFFECTIVE THIRTY (30) DAYS AFTER SUCH MAILING (OR AS SOON THEREAFTER AS IS PROVIDED BY APPLICABLE LAW). NOTHING HEREIN SHALL AFFECT THE RIGHT OF A PARTY OR ANY HOLDER OF A NOTE TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANOTHER PARTY IN ANY OTHER JURISDICTION.

(d) EACH PARTY (i) HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN; (ii) IRREVOCABLY WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY SUCH LITIGATION ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES; *PROVIDED* THAT, THE FOREGOING WAIVER SHALL NOT LIMIT THE INDEMNITY OBLIGATIONS OF THE BORROWER UNDER SECTION 12.03 TO THE EXTENT ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARE INCLUDED IN A THIRD PARTY CLAIM IN CONNECTION WITH WHICH AN INDEMNITEE IS ENTITLED TO INDEMNIFICATION BY THE BORROWER UNDER SECTION 12.03; AND (iii) CERTIFIES THAT NO PARTY HERETO NOR ANY REPRESENTATIVE OR AGENT OF COUNSEL FOR ANY PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, OR IMPLIED THAT SUCH PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS, AND ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT, THE LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS CONTAINED IN THIS SECTION 12.09.

Section 12.10 **Headings**. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 12.11 **Confidentiality**. Each of the Administrative Agent, the Issuing Bank and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, prospective or actual credit insurers, prospective or actual credit insurance brokers, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential in accordance with the terms hereof), (b) to the extent requested by any regulatory authority having jurisdiction over the disclosing party, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process; *provided that* unless specifically prohibited by applicable Requirements of Law, each of the Administrative Agent, the Issuing Bank and the Lenders shall notify the Borrower (without any liability for a failure to so notify the Borrower) of any request made to such person for Information by any Governmental Authority, self-regulatory agency or representative thereof or pursuant to legal process or applicable Requirements of Law (other than any such request in connection with an examination of the financial condition of such Lender by such governmental agency) before disclosure of such Information, (d) to any other party to this Agreement or any other Loan Document, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement for the express benefit of the Borrower containing provisions substantially the same as those of this Section 12.11, to any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or to any actual or prospective counterparty (or its advisors) to any Swap Agreement relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information becomes publicly available other than as a result of a breach of this Section 12.11 or becomes available to the Administrative Agent, the Issuing Bank or any Lender on a nonconfidential basis from a source (other than any Credit Party) not known by them to be subject to disclosure restrictions. For the purposes of this Section 12.11, "Information" means all information received from Borrower or any Subsidiary relating to Borrower or any Subsidiary and their businesses, other than any such information that is available to the Administrative Agent, the Issuing Bank or any Lender on a nonconfidential basis prior to disclosure by Borrower or a Subsidiary. Any Person required to maintain the confidentiality of Information as provided in this Section 12.11 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to rating agencies, market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent, Collateral Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments.

Section 12.12 **Interest Rate Limitation**. It is the intention of the parties hereto that each Lender shall conform strictly to usury laws applicable to it. Accordingly, if the transactions contemplated hereby would be usurious as to any Lender under laws applicable to it (including the

laws of the United States of America or any state or other jurisdiction whose laws may be mandatorily applicable to such Lender notwithstanding the other provisions of this Agreement), then, in that event, notwithstanding anything to the contrary in any of the Loan Documents or any agreement entered into in connection with or as security for the Notes, it is agreed as follows: (a) the aggregate of all consideration which constitutes interest under law applicable to any Lender that is contracted for, taken, reserved, charged or received by such Lender under any of the Loan Documents or agreements or otherwise in connection with the Notes shall under no circumstances exceed the maximum amount allowed by such applicable law, and any excess shall be canceled automatically and if theretofore paid shall be credited by such Lender on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by such Lender to the Borrower); and (b) in the event that the maturity of the Notes is accelerated by reason of an election of the holder thereof resulting from any Event of Default under this Agreement or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to any Lender may never include more than the maximum amount allowed by such applicable law, and excess interest, if any, provided for in this Agreement or otherwise shall be canceled automatically by such Lender as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited by such Lender on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by such Lender to the Borrower). All sums paid or agreed to be paid to any Lender for the use, forbearance or detention of sums due hereunder shall, to the extent permitted by law applicable to such Lender, be amortized, prorated, allocated and spread throughout the stated term of the Loans until payment in full so that the rate or amount of interest on account of any Loans hereunder does not exceed the maximum amount allowed by such applicable law. If at any time and from time to time the amount of interest payable to any Lender on any date shall be computed at the Highest Lawful Rate applicable to such Lender pursuant to this Section 12.12 and in respect of any subsequent interest computation period the amount of interest otherwise payable to such Lender would be less than the amount of interest payable to such Lender computed at the Highest Lawful Rate applicable to such Lender, then the amount of interest payable to such Lender in respect of such subsequent interest computation period shall continue to be computed at the Highest Lawful Rate applicable to such Lender until the total amount of interest payable to such Lender shall equal the total amount of interest which would have been payable to such Lender if the total amount of interest had been computed without giving effect to this Section 12.12.

Section 12.13 **EXCULPATION PROVISIONS**. EACH OF THE PARTIES HERETO SPECIFICALLY AGREES THAT IT HAS A DUTY TO READ THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND AGREES THAT IT IS CHARGED WITH NOTICE AND KNOWLEDGE OF THE TERMS OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; THAT IT HAS IN FACT READ THIS AGREEMENT AND IS FULLY INFORMED AND HAS FULL NOTICE AND KNOWLEDGE OF THE TERMS, CONDITIONS AND EFFECTS OF THIS AGREEMENT; THAT IT HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL OF ITS CHOICE THROUGHOUT THE NEGOTIATIONS PRECEDING ITS EXECUTION OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; AND HAS RECEIVED THE ADVICE OF ITS ATTORNEY IN ENTERING INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; AND THAT IT RECOGNIZES THAT CERTAIN OF THE TERMS OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS RESULT IN ONE PARTY ASSUMING THE LIABILITY

INHERENT IN SOME ASPECTS OF THE TRANSACTION AND RELIEVING THE OTHER PARTY OF ITS RESPONSIBILITY FOR SUCH LIABILITY. EACH PARTY HERETO AGREES AND COVENANTS THAT IT WILL NOT CONTEST THE VALIDITY OR ENFORCEABILITY OF ANY EXCULPATORY PROVISION OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS ON THE BASIS THAT THE PARTY HAD NO NOTICE OR KNOWLEDGE OF SUCH PROVISION OR THAT THE PROVISION IS NOT "CONSPICUOUS."

Section 12.14 **Collateral Matters; Swap Agreements; Treasury Management Agreements**. The benefit of the Security Instruments and of the provisions of this Agreement relating to any Collateral securing the Obligations shall also extend to and be available to Secured Swap Parties and Treasury Management Lenders on a *pro rata* basis (but subject to the terms of the Loan Documents, including provisions thereof relating to the application and priority of payments to the Persons entitled thereto) in respect of any obligations of the Borrower, any of its Restricted Subsidiaries or any other Guarantors which arise under Secured Swap Agreements or Lender Treasury Management Agreements, as applicable. Except as expressly set forth in Section 12.02(b), no Secured Swap Party or Treasury Management Lender shall have any voting or approval rights under any Loan Document as a result of the existence of obligations owed to it under any such Swap Agreements or Lender Treasury Management Agreements, as applicable. By accepting the benefits of the Collateral, each Secured Swap Party agrees that, notwithstanding anything to the contrary in any of its Swap Agreements with the Borrower or any other Credit Party, the Borrower and the other Credit Parties may grant Liens under the Loan Documents that burden and attach to such Swap Agreements and the rights of the Borrower and the other Credit Parties thereunder.

Section 12.15 **USA Patriot Act Notice**. Each Agent and each Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies the Borrower and each Guarantor, which information includes the name and address of the Borrower and each Guarantor and other information that will allow it to identify the Borrower and each Guarantor in accordance with the Act.

Section 12.16 **No Advisory or Fiduciary Responsibility**. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that: (a) (i) no fiduciary, advisory or (except as expressly provided in Section 12.04) agency relationship between Borrower and its Subsidiaries and the Administrative Agent, the Collateral Agent or any Lender is intended to be or has been created in respect of the transactions contemplated hereby or by the other Loan Documents, irrespective of whether the Administrative Agent, the Collateral Agent or any Lender has advised or is advising Borrower or any Subsidiary on other matters; (ii) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Collateral Agent and the Lenders are arm's-length commercial transactions between the Borrower and its Subsidiaries, on the one hand, and the Administrative Agent, the Collateral Agent and the Lenders, on the other hand; (iii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent that it has deemed appropriate; and (iv) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby

and by the other Loan Documents; and (b) (i) the Administrative Agent, the Collateral Agent and the Lenders each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of their Subsidiaries, or any other Person; (ii) neither the Administrative Agent, the Collateral Agent nor the Lenders has any obligation to the Borrower or any of its Subsidiaries with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Collateral Agent and the Lenders and their respective Affiliates may be engaged, for their own accounts or the accounts of customers, in a broad range of transactions that involve interests that differ from those of the Borrower and its Subsidiaries, and none of the Administrative Agent, the Collateral Agent nor the Lenders has any obligation to disclose any of such interests to the Borrower or its Subsidiaries. To the fullest extent permitted by Law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent, the Collateral Agent and the Lenders with respect to any breach or alleged breach of agency (except as expressly set forth in Section 12.04) or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 12.17 **Acknowledgement and Consent to Bail-In of Affected Financial Institutions**. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of a Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

Section 12.18 **Acknowledgement Regarding any Supported QFCs**. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit

Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

Section 12.19 **Release of Collateral and Guarantee Obligations; Disavowal of Liens**.

(a) The Secured Parties hereby irrevocably agree that the Liens granted to the Collateral Agent by the Credit Parties on any Collateral shall be automatically released (i) in full, as set forth in clauses (c) or (d) below, (ii) upon the Disposition of such Collateral (including as part of or in connection with any other Disposition permitted hereunder) to any Person other than another Credit Party, to the extent such Disposition is made in compliance with the terms of this Agreement (and the Collateral Agent may rely conclusively on a certificate to that effect provided to it by any Credit Party upon its reasonable request without further inquiry), (iii) to the extent such Collateral is comprised of property leased to a Credit Party, upon termination or expiration of such lease, (iv) if the release of such Lien is approved, authorized or ratified in writing by the Majority Lenders (or such other percentage of the Lenders whose consent may be required in accordance with Section 12.02), (v) to the extent the property constituting such Collateral is owned by any Guarantor, upon the release of such Guarantor from its obligations under the Guaranty and Collateral Agreement and (vi) as required by the Collateral Agent to effect any Disposition of Collateral in connection with any exercise of remedies of the Collateral Agent pursuant to the Security Instruments, but in the case of clauses (ii), (iii) or (v), such release of Liens shall be conditioned upon the concurrent release of any then existing Enumerated Lien on such Collateral. Any such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those being released) upon (or obligations (other than those being released) of the Credit Parties in respect of) all interests retained by the Credit Parties, including the proceeds of any Disposition, all of which shall continue to constitute part of the Collateral to the extent required

by the applicable Loan Documents, except to the extent otherwise released in accordance with the provisions of the Loan Documents. Additionally, the Secured Parties hereby irrevocably agree that any Guarantor shall be automatically released from their obligations under the Guaranty and Collateral Agreement and the other Loan Documents upon (i) consummation of any transaction permitted hereunder resulting in such Guarantor becoming an Excluded Subsidiary (including an Unrestricted Subsidiary) or (ii) consummation of any transaction permitted hereunder resulting in such Guarantor no longer being a Subsidiary of the Borrower. Further, the Collateral Agent shall release any Guarantor from its obligations under the Guaranty and Collateral Agreement and other Loan Documents if such Guarantor ceases to be a Restricted Subsidiary, promptly upon the Borrower delivering a request for such release to the Collateral Agent and the Administrative Agent.

(b) Upon written request by the Borrower to the Collateral Agent and the Administrative Agent, the Collateral Agent shall execute releases (or, if appropriate, an instruction to the Collateral Trustee (as defined in an Acceptable Collateral Trust Agreement) to execute) in the form reasonably acceptable to the Borrower and the Collateral Agent at the cost and expense of the Borrower thereby releasing any Disposition made in compliance with the terms of this Agreement as set forth in Section 12.19(a)(ii).

(c) The Secured Parties hereby (i) irrevocably authorize the Collateral Agent to (all without the further consent or joinder of any Secured Party), and the Collateral Agent shall (or, if appropriate, shall instruct the Collateral Trustee (as defined in the Acceptable Collateral Trust Agreement) to), execute and deliver any instruments, documents, and agreements necessary or desirable to effect, evidence and/or confirm the release of any Guarantor or Collateral pursuant to (and subject to the requirements of) the foregoing provisions of this Section and pursuant to any Acceptable Intercreditor Agreement, Acceptable Collateral Trust Agreement or Acceptable Hedge Intercreditor Agreement, including the execution and delivery of all releases of Liens, termination statements, or assignments and (ii) agree that (w) the Collateral Agent's entry into any Acceptable Intercreditor Agreement, any Acceptable Collateral Trust Agreement and any Acceptable Hedge Intercreditor Agreement is reasonable and consent to any such Acceptable Intercreditor Agreement, Acceptable Collateral Trust Agreement and Acceptable Hedge Intercreditor Agreement and to the Collateral Agent's execution thereof, (x) the Collateral Agent is authorized, without any further consent of any Secured Party, to enter into or amend any other intercreditor agreement or collateral trust agreement with the agent or other representatives of the holders of Indebtedness that is permitted to be secured by a Lien on the Collateral that is permitted under this Agreement, in each case for the purpose of adding the holders of such Indebtedness (or their representative) as a party thereto and otherwise causing such Indebtedness to be subject thereto (it being understood that any such amendment, amendment and restatement or supplement may make such other changes to the applicable intercreditor agreement or the applicable collateral trust agreement as, in the good faith determination of the Collateral Agent, are required to effectuate the foregoing), (y) the Collateral Agent may rely exclusively on a certificate of an Responsible Officer of the Borrower as to whether any such other Liens are permitted and (z) any such intercreditor agreement or collateral trust agreement referred to in clause (x) above and any Acceptable Intercreditor Agreement, any Acceptable Collateral Trust Agreement and any Acceptable Hedge Intercreditor Agreement, entered into by the Collateral Agent (as defined therein) shall be binding on the Secured Parties. Upon any such release, any representation, warranty or covenant contained in any Loan Document relating to any such Collateral or Guarantor shall no longer be deemed to be repeated.

(d) Notwithstanding anything to the contrary contained in any Loan Document, upon Payment in Full, all obligations under all the Loan Documents shall be automatically released and discharged, and the Collateral Agent shall (without notice to, or vote or consent of, any Secured Party) take such actions as shall be required, advisable or reasonably requested by the Borrower to evidence or otherwise more fully effect the foregoing, but such Obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

(e) If any Lender determines, acting reasonably, that any applicable law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender to hold or benefit from a Lien over real property pursuant to any law of the United States or any State thereof, such Lender may notify the Collateral Agent and the Administrative Agent and disclaim any benefit of such security interest to the extent of such illegality; but such determination or disclaimer shall not invalidate or render unenforceable such Lien for the benefit of any other Lender.

(f) Upon the request of the Collateral Agent at any time, the Majority Lenders will confirm in writing the Collateral Agent’s authority to release particular types or items of Collateral pursuant to this Section.

[SIGNATURES BEGIN NEXT PAGE]

IN WITNESS WHEREOF, each of the parties hereto has caused a counterpart of this Agreement to be duly executed and delivered as of the date first above written.

CHESAPEAKE ENERGY CORPORATION, as the Borrower

By: /s/ Domenic J. Dell'Osso, Jr.

Name: Domenic J. Dell'Osso, Jr.

Title: Executive Vice President and Chief Financial Officer

LENDERS

[Signature pages on file with the company]

EXHIBIT A-1
[FORM OF] TRANCHE A NOTE

$[ ] , 202[ ]

FOR VALUE RECEIVED, Chesapeake Energy Corporation, an Oklahoma corporation (the "Borrower") hereby promises to pay to [ ] (the "Lender"), at the office of MUFG Bank, Ltd. (the "Administrative Agent"), located at 1221 Avenue of the Americas, 6th Floor, New York, NY 10020, Attention: Agency Desk, the principal sum equal to the amount of such Lender's Tranche A Commitment (or such lesser amount as shall equal the aggregate unpaid principal amount of the Tranche A Loans made by the Lender to the Borrower under the Credit Agreement, as hereinafter defined), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Credit Agreement, and to pay interest on the unpaid principal amount of each such Tranche A Loan, at such office, in like money and funds, for the period commencing on the date of such Tranche A Loan until such Tranche A Loan shall be paid in full, at the rates per annum and on the dates provided in the Credit Agreement.

The date, amount, Type, Class, interest rate, Interest Period and maturity of each Tranche A Loan made by the Lender to the Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of this Tranche A Note (this "Note"), may be endorsed by the Lender on the schedules attached hereto or any continuation thereof or on any separate record maintained by the Lender. Failure to make any such notation or to attach a schedule shall not affect the Lender's or the Borrower's rights or obligations in respect of such Tranche A Loans or affect the validity of such transfer by the Lender of this Note.

This Note is one of the Notes referred to in the Credit Agreement, dated as of February [_], 2021, among the Borrower, the Administrative Agent, MUFG Union Bank, N.A., as Collateral Agent, and the lenders and other parties signatory thereto (including the Lender), and evidences Tranche A Loans made by the Lender thereunder (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"). Capitalized terms used in this Note have the respective meanings assigned to them in the Credit Agreement.

This Note is subject to, and the Lender is entitled to the benefits of, the provisions of the Credit Agreement, and the Tranche A Loans evidenced hereby are guaranteed and secured as and to the extent provided therein and in the other Loan Documents. The Tranche A Loans evidenced hereby are, in each case, subject to prepayment prior to the Tranche A Maturity Date, in whole or in part, as provided in the Credit Agreement.

All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, guarantor, endorser or otherwise, hereby waive diligence, presentment, demand, protest and notice of any kind whatsoever in connection with this Note. No failure to exercise and no delay in exercising, on the part of the Administrative Agent or the Lender, any right, remedy, power or privilege hereunder or under the Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. A waiver by the Administrative Agent or the Lender of any right, remedy, power or privilege hereunder or under any Loan Document on any one occasion shall not be construed as a bar to any right or remedy that the Administrative Agent or the Lender would otherwise have on any future occasion. The rights, remedies, powers and privileges herein

provided are cumulative, may be exercised singly or concurrently and are not exclusive of any rights, remedies, powers and privileges provided by law.

[*Remainder of page intentionally left blank*]

Exhibit A-1

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

CHESAPEAKE ENERGY CORPORATION, an Oklahoma corporation

By: _____

Name: _____

Title: _____

EXHIBIT A-2
[FORM OF] TRANCHE B NOTE

$[ ] , 202[ ]

FOR VALUE RECEIVED, Chesapeake Energy Corporation, an Oklahoma corporation (the "Borrower") hereby promises to pay to [ ] (the "Lender"), at the office of MUFG Bank, Ltd. (the "Administrative Agent"), located at 1221 Avenue of the Americas, 6th Floor, New York, NY 10020, Attention: Agency Desk, the principal sum equal to the amount of such Lender's Tranche B Commitment (or such lesser amount as shall equal the aggregate unpaid principal amount of the Tranche B Loans made by the Lender to the Borrower under the Credit Agreement, as hereinafter defined), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Credit Agreement, and to pay interest on the unpaid principal amount of each such Tranche B Loan, at such office, in like money and funds, for the period commencing on the date of such Tranche B Loan until such Tranche B Loan shall be paid in full, at the rates per annum and on the dates provided in the Credit Agreement.

The date, amount, Type, Class, interest rate, Interest Period and maturity of each Tranche B Loan made by the Lender to the Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of this Tranche B Note (this "Note"), may be endorsed by the Lender on the schedules attached hereto or any continuation thereof or on any separate record maintained by the Lender. Failure to make any such notation or to attach a schedule shall not affect the Lender's or the Borrower's rights or obligations in respect of such Tranche B Loans or affect the validity of such transfer by the Lender of this Note.

This Note is one of the Notes referred to in the Credit Agreement, dated as of February [_], 2021, among the Borrower, the Administrative Agent, and the lenders and other parties signatory thereto (including the Lender), and evidences Tranche B Loans made by the Lender thereunder (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"). Capitalized terms used in this Note have the respective meanings assigned to them in the Credit Agreement.

This Note is subject to, and the Lender is entitled to the benefits of, the provisions of the Credit Agreement, and the Tranche B Loans evidenced hereby are guaranteed and secured as and to the extent provided therein and in the other Loan Documents. The Tranche B Loans evidenced hereby are, in each case, subject to prepayment prior to the Tranche B Maturity Date, in whole or in part, as provided in the Credit Agreement.

All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, guarantor, endorser or otherwise, hereby waive diligence, presentment, demand, protest and notice of any kind whatsoever in connection with this Note. No failure to exercise and no delay in exercising, on the part of the Administrative Agent or the Lender, any right, remedy, power or privilege hereunder or under the Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. A waiver by the Administrative Agent or the Lender of any right, remedy, power or privilege hereunder or under any Loan Document on any one occasion shall not be construed as a bar to any right or remedy that the Administrative Agent or the Lender would otherwise have on any future occasion. The rights, remedies, powers and privileges herein

provided are cumulative, may be exercised singly or concurrently and are not exclusive of any rights, remedies, powers and privileges provided by law.

[*Remainder of page intentionally left blank*]

Exhibit A-2

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

CHESAPEAKE ENERGY CORPORATION, an Oklahoma corporation

By: _____

Name: _____

Title: _____

EXHIBIT B
[FORM OF] BORROWING REQUEST

$[ ] , 202[ ]

Chesapeake Energy Corporation, an Oklahoma corporation (the "Borrower"), pursuant to Section 2.03 of the Credit Agreement, dated as of February [_], 2021, among the Borrower, MUFG Bank, Ltd., as Administrative Agent, MUFG Union Bank, N.A., as Collateral Agent, the Lenders and other parties from time to time party thereto (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"; unless otherwise defined herein, each capitalized term used herein has the meaning assigned to such term in the Credit Agreement), hereby requests a Borrowing as follows and, with respect to clauses (vii), (viii) and (ix), represents and warrants as follows:

(i) Requested Borrowing is to be a [Tranche A Borrowing] [Tranche B Borrowing];

(ii) Aggregate amount of the requested Borrowing is $[ ];

(iii) Date of such Borrowing is [ ], 20[ ] [1];

(iv) Requested Borrowing is to be a Borrowing of [ABR Loans] [LIBOR Loans];

(v) In the case of a Borrowing of LIBOR Loans, the initial Interest Period applicable thereto is [ ]; and

(vi) Location and number of the Borrower's account to which funds are to be disbursed, which complies with the requirements of Section 2.05 of the Credit Agreement, is as follows:

[Bank Name]

[Address of Bank]
[Address of Bank]
Account Number: [_____]

(vii) The representations and warranties of the Credit Parties contained in the Credit Agreement and in the other Loan Documents are true and correct in all material respects on and as of the date of such Borrowing except (i) to the extent any such representations and warranties are expressly limited to an earlier date, in which case, on and as of the date of the Borrowing requested hereby, such representations and warranties are true and correct in all material respects as of such specified earlier date, and (ii) to the extent that any such representation and warranty is expressly qualified by materiality or by reference to Material Adverse Effect, such representation and warranty (as so qualified) is true and correct in all respects.

(viii) At the time of and immediately after giving effect to the Borrowing requested hereby, no Default or Event of Default has occurred or is continuing.

[1] Which shall be a Business Day.

(ix) At the time of and immediately after giving effect to the Borrowing requested hereby (and the application of proceeds thereof on the date of the requested Borrowing), the Borrower and the Restricted Subsidiaries do not have any Excess Cash immediately before or after giving effect to such Borrowing, in each case determined after giving effect to any intended use of proceeds in the ordinary course of business on or before the date that is three Business Days after the date the Borrower receives the funds from such requested Borrowing, nor may such requested Borrowing, after giving effect to any such intended use of proceeds in the ordinary course of business, be in an amount that would trigger a mandatory prepayment under Section 3.04(c)(v) of the Credit Agreement, and such Loans will be funded into and maintained until used in accordance with the Credit Agreement in (A) an account of the Borrower over which the Collateral Agent has "control" (within the meaning of Section 9-104 of the UCC) or (B) an Excluded Account to the extent permitted in accordance with the definition thereof.

[*Remainder of page intentionally left blank*]

Exhibit B

The undersigned certifies on behalf of the Borrower (and not individually) that he/she is a Responsible Officer of the Borrower, and that as such he/she is authorized to execute this certificate on behalf of the Borrower as of the day and year first above written. The undersigned further certifies, represents and warrants on behalf of the Borrower (and not individually) that the Borrower is entitled to receive the required Borrowing under the terms and conditions of the Credit Agreement.

CHESAPEAKE ENERGY CORPORATION, an Oklahoma corporation

By: _____

Name: _____

Title: _____

Exhibit B

EXHIBIT C
[FORM OF] INTEREST ELECTION REQUEST

$[ ] , 202[ ]

Chesapeake Energy Corporation, an Oklahoma corporation (the "Borrower"), pursuant to Section 2.04 of the Credit Agreement, dated as of February [_], 2021, among the Borrower, MUFG Bank, Ltd., as Administrative Agent, MUFG Union Bank, N.A., as Collateral Agent, the Lenders and other parties from time to time party thereto (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"; unless otherwise defined herein, each capitalized term used herein has the meaning assigned to such term in the Credit Agreement), hereby makes an Interest Election Request as follows:

(i) The Borrowing to which this Interest Election Request applies, and if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information specified pursuant to (iii) [and (iv)] below shall be specified for each resulting Borrowing) is [ ];

(ii) The resulting Borrowing is to be [a Tranche A Borrowing] [a Tranche B Borrowing]

(iii) The effective date of the election made pursuant to this Interest Election Request is [ ], 20[ ][2]; [and]

(iv) The resulting Borrowing is to be a Borrowing of [ABR Loans] [LIBOR Loans][; and]

[*If the resulting Borrowing is a Borrowing of LIBOR Loans, add the following*:]

[(v) The Interest Period[3] applicable to the resulting Borrowing after giving effect to such election is [ ]].

[*Remainder of page intentionally left blank*]

[2] Which shall be a Business Day.

[3] Which shall be a period contemplated by the definition of the term "Interest Period" from the Credit Agreement.

The undersigned certifies on behalf of the Borrower (and not individually) that he/she is a Responsible Officer of the Borrower, and that as such he/she is authorized to execute this certificate on behalf of the Borrower as of the day and year first above written. The undersigned further certifies, represents and warrants on behalf of the Borrower (and not individually) that the Borrower is entitled to receive the requested continuation or conversion under the terms and conditions of the Credit Agreement.

CHESAPEAKE ENERGY CORPORATION, an Oklahoma corporation

By: _____

Name: _____

Title: _____

Exhibit C

EXHIBIT D
[FORM OF] COMPLIANCE CERTIFICATE

[DATE]

Compliance Period: [Fiscal Year] [Fiscal Quarter] ended [, 20[ ] (the "Compliance Period")

The undersigned hereby certifies that he/she is the [ ] of CHESAPEAKE ENERGY CORPORATION, an Oklahoma corporation (the "Borrower"), and that as such he/she is authorized to execute this certificate on behalf of the Borrower. With reference to the Credit Agreement, dated as of February [_], 2021, among the Borrower, MUFG Bank, Ltd., as Administrative Agent, MUFG Union Bank, N.A., as Collateral Agent, the Lenders and other parties from time to time party thereto (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"; unless otherwise defined herein, each capitalized term used herein has the meaning assigned to such term in the Credit Agreement), the undersigned certifies on behalf of the Borrower (and not individually) as follows:

(a) As of the date hereof, there exists no Default or Event of Default [or, if any Default or Event of Default does exist, specify the nature and extent thereof].

(b) Attached hereto as Annex A are calculations required to establish whether the Borrower and its Restricted Subsidiaries were in compliance with the Financial Performance Covenants (other than the Consolidated Secured Indebtedness Coverage Ratio) as of the end of the Compliance Period.

(c) There have been no changes in the identity of the Restricted Subsidiaries, Material Subsidiaries, Guarantors and Unrestricted Subsidiaries as at the end of the Compliance Period from the Restricted Subsidiaries, Material Subsidiaries, Guarantors and Unrestricted Subsidiaries, respectively, provided to the Lenders on the Effective Date or the most recent fiscal year or period, as the case may be [or, if any such change has occurred, specify such change].

(d) There have been no changes in (w) the jurisdiction in which the Borrower or any Restricted Subsidiary is incorporated, formed, or otherwise organized, (x) the location of the Borrower's or any Restricted Subsidiary's chief executive office, (y) the Borrower's or any Restricted Subsidiary's identity or corporate, limited liability or partnership structure, or (z) the Borrower's or any Restricted Subsidiary's organizational identification number in such jurisdiction of organization or federal taxpayer identification number [or, if any such change has occurred, specify such change].

(e) Attached hereto as Annex B are reasonably detailed calculations demonstrating compliance with Section 8.19 of the Credit Agreement and with Section 9.18 of the Credit Agreement.

(f) Since the delivery of the last Compliance Certificate[4], there are no new Excluded Accounts that have not been previously disclosed on Schedule IV or Schedule V to the Guaranty and Collateral Agreement, as applicable, or on Annex C of any previously delivered Compliance Certificate [or, if new Excluded Accounts have been opened that are not disclosed on Schedule IV or Schedule V to the Guaranty and Collateral Agreement or on a previous Compliance Certificate, attached hereto as Annex C is a supplement to Schedule IV and/or Schedule V].

[4] For the first Compliance Certificate due after the Effective Date pursuant to Section 8.01(a) of the Credit Agreement, this should be revised to say "Since the Effective Date".

(g) [Attached hereto as Annex D are reasonably detailed calculations demonstrating the value of the Adjusted Consolidated Net Tangible Assets, Free Cash Flow and Distributable Free Cash Flow, as applicable, of as the last day of the Compliance Period.][5]

[*Remainder of page intentionally left blank*]

[5] Include this only with delivery of annual financial statements pursuant to Section 8.01(a) of the Credit Agreement; *provided that* the first delivery of the calculations demonstrating the value of Adjusted Consolidated Net Tangible Assets, Free Cash Flow and Distributable Free Cash Flow shall not be required to be delivered at the time of the first delivery of the financial statements provided for in Section 8.01(a) of the Credit Agreement and shall instead be delivered at the time of the first delivery of the financial statements provided for in Section 8.01(b) of the Credit Agreement.

Exhibit D

EXECUTED AND DELIVERED as of the date first written above.

CHESAPEAKE ENERGY CORPORATION, an Oklahoma corporation

By: _____

Name: _____

Title: _____

Exhibit D

Annex A

The information described herein is attached to and made part of the Compliance Certificate dated [ ], 20[ ], and pertains to the period from [ ], 20[ ] to [ ], 20[ ] (the "Compliance Period").

A.	**Section 9.01(a) Consolidated First Lien Net Leverage Ratio**		
	(I)	Consolidated First Lien Indebtedness as of the last day of the Compliance Period	$_____
	(II)	The lesser of (1) $100,000,000 and (2) the total collected balances of unencumbered cash on hand at such time that is maintained in any Deposit Accounts or Securities Accounts of the Borrower or any other Credit Party covered by an Account Control Agreement[6]	$_____
	(III)	Line A.(I) minus Line A.(II)	$_____
	(IV)	EBITDAX for the Rolling Period ending [ ], 20[ ] (See Schedule 1)	$_____
	(V)	Line A.(III) divided by Line A.(IV)	____ to 1.00
	(VI)	Maximum ratio permitted under Section 9.01(a) of the Credit Agreement	2.75 to 1.00
	(VII)	In Compliance?	Yes/No
B.	**Section 9.01(b) Consolidated Total Net Leverage Ratio**		
	(I)	Consolidated Total Indebtedness as of the last day of the Compliance Period	$_____
	(II)	The lesser of (1) $100,000,000 and (2) the total collected balances in unencumbered cash on hand at such time that is maintained in any Deposit Accounts or Securities Accounts of the Borrower or any other Credit Party covered by an Account Control Agreement[7]	$_____
	(III)	Line B.(I) minus Line B.(II)	$_____
	(IV)	EBITDAX for the Rolling Period ending [ ], 20[ ] (See Schedule 1)	$_____
	(V)	Line A.(III) divided by Line A.(IV)	____ to 1.00
	(VI)	Maximum ratio permitted under Section 9.01(b) of the Credit Agreement	3.50 to 1.00
	(VII)	In Compliance?	Yes/No
C.	**Section 9.01(c) Consolidated Secured Indebtedness Coverage Ratio**		
	(I)	Total PDP PV-10 as of the "as of" date of the most recently delivered Reserve Report	$_____
	(II)	Consolidated Secured Indebtedness as of the applicable Coverage Ratio Test Date	$_____

[6] Cash or cash equivalents that would appear as "restricted" on a consolidated balance sheet or would be encumbered because such cash or cash equivalents is subject to an Account Control Agreement in favor of the Collateral Agent shall be deemed to be unrestricted and unencumbered for purposes hereof

[7] Cash or cash equivalents that would appear as "restricted" on a consolidated balance sheet or would be encumbered because such cash or cash equivalents is subject to an Account Control Agreement in favor of the Collateral Agent shall be deemed to be unrestricted and unencumbered for purposes hereof

(III)	The lesser of (1) $100,000,000 and (2) the total collected balances in unencumbered cash on hand and cash equivalents at such time that is maintained in any Deposit Accounts or Securities Accounts of the Borrower or any other Credit Party covered by an Account Control Agreement[8]	$_____
(IV)	Line C.(II) minus Line C.(III)	$_____
(V)	Line C.(I) divided by Line C.(IV)	____ to 1.00
(IV)	Minimum ratio required under Section 9.01(c) of the Credit Agreement	1.50 to 1.00
(V)	In Compliance?	Yes/No

D. **Section 9.01(d) Current Ratio**

(I)	Current Assets	$_____
(II)	Current Liabilities	$_____
(III)	Line D.(I) divided by Line D.(II)	____ to 1.00
(IV)	Minimum ratio required under Section 9.01(d) of the Credit Agreement	1.00 to 1.00
(V)	In Compliance?	Yes/No

[8] Cash or cash equivalents that would appear as "restricted" on a consolidated balance sheet or would be encumbered because such cash or cash equivalents is subject to an Account Control Agreement in favor of the Collateral Agent shall be deemed to be unrestricted and unencumbered for purposes hereof

Schedule 1
to
Annex A

	EBITDAX[9]	**Quarter 1 ended __/__/__**	**Quarter 2 ended __/__/__**	**Quarter 3 ended __/__/__**	**Quarter 4 ended __/__/__**	**Total (Quarters 1-4)**
(1)	Consolidated Net Income for such period					
(2)	The following amounts, without duplication and to the extent reflected as a charge in the statement of Consolidated Net Income for such period					
	(a) income tax expense					
	(b) interest expense					
	(c) depletion, depreciation and amortization expense					
	(d) any loss on Dispositions of assets or retirement of debt and other non-recurring cash losses, charges or expenses (including those resulting from restructurings, divestitures and severances) (*but* the amount of non-recurring cash losses, charges or expenses added back pursuant to this clause (d) for any period shall not exceed 5% of EBITDAX (before giving effect to this addition for non-recurring cash losses, charges or expenses) for such period)					

[9] For purposes of calculating EBITDAX for any Rolling Period (other than for purposes of calculating Free Cash Flow or Distributable Free Cash Flow), if any Group Member shall have (a) made any Investment in any Unrestricted Subsidiary, (b) made any acquisition or Disposition of assets other than from or to another Group Member, (c) consolidated or merged with or into any Person (other than another Group Member), (d) Disposed of the equity interests of a Group Member other than from or to another Group Member, or (e) made any acquisition of a Person that becomes a Group Member, then EBITDAX shall be calculated on a Pro Forma Basis; but the Borrower may elect not to calculate EBITDAX on a Pro Forma Basis with respect to any one or more Investments, acquisitions, Dispositions, consolidations and mergers during a Rolling Period if the same would not reasonably be expected to increase or decrease EBITDAX for such Rolling Period by more than 5%; provided that the calculations of such pro forma adjustments are acceptable to the Administrative Agent in its reasonable discretion.

For purposes of calculating EBITDAX for the fiscal quarter of the Borrower ending December 31, 2020, March 31, 2021, June 30, 2021 and September 30, 2021 (other than for purposes of calculating Free Cash Flow or Distributable Free Cash Flow), (a) EBITDAX for the Rolling Period ending December 31, 2020 and up to but not including March 31, 2021 shall be an amount equal EBITDAX for the fiscal quarter ending on such date *multiplied by* 4, (b) EBITDAX for the Rolling Period ending March 31, 2021 and up to but not including June 30, 2021 shall be an amount equal EBITDAX for the fiscal quarter ending on such date *multiplied by* 4, (c) EBITDAX for the Rolling Period ending June 30, 2021 and up to but not including September 30, 2021 shall be an amount equal to EBITDAX for the two fiscal quarter period ending on such date *multiplied by* 2 and, (d) EBITDAX for the Rolling Period ending September 30, 2021 and up to but not including December 31, 2021 shall be an amount equal to EBITDAX for the three fiscal quarter period ending on such date *multiplied by* 4/3. For the avoidance of doubt, each fiscal quarter thereafter, EBITDAX shall be equal to EBITDAX for any Rolling Period then ending

	(e) any other non-cash charge, non-cash expenses or non-cash losses of any Group Member for such period (excluding any such charge, expense or loss incurred in the ordinary course of business that constitutes an accrual of or reserve for cash charges for any future period) including non-cash losses or charges resulting from the requirements of SFAS 133 or 143 (in each case used in this definition, as the same has been and may be amended, supplemented and replaced), *but* cash payments made during such period or in any future period in respect of such non-cash charges, expenses or losses (other than any such excluded charge, expense or loss as described above) shall be subtracted from Consolidated Net Income in calculating EBITDAX for the period in which such payments were made					
	(f) any fees, expenses and other transaction costs (whether or not such transactions were consummated) which are incurred through June 30, 2021 in connection with fresh start accounting, the Chapter 11 Cases, the Transactions, the Plan of Reorganization, the transactions contemplated thereby and any other reorganization items and restructuring costs					
	(g) any expense or loss in respect of a Qualifying VPP (other than any expense or loss in respect of the marketing of production related to any VPP Properties)					
	(h) exploration expenses					
(3)	Line (2)(a) plus Line (2)(b) plus Line (2)(c) plus Line (2)(d) plus Line (2)(e) plus Line (2)(f) plus Line (2)(g) plus Line (2)(h)					
(4)	The following amounts, to the extent included in the statement of such Consolidated Net Income for such period					
	(a) interest income					
	(b) any gains on Dispositions of assets or retirement of debt and other non-recurring cash income or gains (including those resulting from restructurings, divestitures and severances)					
	(c) any other non-cash income or gain (excluding any items that represent the reversal of any accrual of, or cash reserve for, anticipated cash charges in any prior period that are described in the parenthetical to clause (e) above), including any non-cash income or gains resulting from the requirements of SFAS 133 or 143, all as determined on a consolidated basis in accordance with GAAP					
	(d) any income or gain in respect of a Qualifying VPP (other than any income or gain in respect of the marketing of production related to any VPP Properties)					

(5)	Line (4)(a) plus Line (4)(b) plus Line (4)(c) plus Line (4)(d)					
(6)	Total of Line (1) plus Line (3) less Line (5)					

Exhibit D

Annex B

See attached.

Exhibit D

Annex C

Schedule IV

Deposit Accounts

Account Number	Entity	Account Description	Bank Name	Excluded Account Y/N

Schedule V

Securities Accounts

Account / Reference Number	Entity	Account Description	Financial Institution Name	Excluded Account Y/N

Exhibit D

Annex D

A. **Adjusted Consolidated Net Tangible Assets**

	Adjusted Consolidated Net Tangible Assets [10,11]	as of the end of the Compliance Period
(1)	Discounted future net revenue from proved oil and gas reserves of the Borrower and its Subsidiaries calculated in accordance with SEC guidelines before any state or federal income taxes, as estimated by petroleum engineers (which may include the Borrower's internal engineers) in a reserve report prepared as of the end of the Borrower's most recently completed fiscal year or, at the Borrower's option, a reserve report prepared as of the end of the most recently completed fiscal quarter (if such reserve report has been provided to the Administrative Agent)	
(2)	The discounted future net revenue of the following since the date of such year-end or quarterly reserve report	
	(a) estimated proved oil and gas reserves of the Borrower and its Subsidiaries attributable to any acquisition consummated, which would, in accordance with standard industry practice, result in such increases as calculated in accordance with SEC guidelines (utilizing the prices utilized in such year-end or quarterly reserve report, as applicable)	
	(b) estimated proved oil and gas reserves of the Borrower and its Subsidiaries attributable to extensions, discoveries and other additions and upward revisions of estimates of proved oil and gas reserves due to exploration, development or exploitation, production or other activities conducted or otherwise occurring, which would, in accordance with standard industry practice, result in such increases as calculated in accordance with SEC guidelines (utilizing the prices utilized in such year-end or quarterly reserve report, as applicable)	
	(c) estimated proved oil and gas reserves of the Borrower and its Subsidiaries produced or Disposed of	
	(d) reductions in the estimated oil and gas reserves of the Borrower and its Subsidiaries	
(3)	Line (2)(a) plus Line (2)(b) plus Line (2)(c) plus Line (2)(d)	*
(4)	Line (1) plus Line (3)	

[10] As used in Section A of this Annex B, Net Working Capital means (i) all Current Assets of the Borrower and its Subsidiaries, ***minus*** (ii) all Current Liabilities of the Borrower and its Subsidiaries, except Current Liabilities included in Indebtedness.

[11] It is agreed and understood that, once the audited balance sheet of the Borrower and its consolidated Subsidiaries giving effect to fresh start accounting becomes available, "Adjusted Consolidated Net Tangible Assets" shall be determined giving pro forma effect to fresh start accounting.

(5)	The capitalized costs that are attributable to Oil and Gas Properties of the Borrower and its Subsidiaries to which no proved oil and gas reserves are attributable, based on the Borrower's books and records as of a date no earlier than the date of the Borrower's latest annual or quarterly financial statements	
(6)	the Net Working Capital on a date no earlier than the date of the Borrower's latest annual or quarterly financial statements	
(7)	the greater of (I) the net book value on a date no earlier than the date of the Borrower's latest annual or quarterly financial statements, and (II) the appraised value, as estimated by independent appraisers, of other tangible assets (including Investments in unconsolidated Subsidiaries) of the Borrower and its Subsidiaries	
(8)	Line (4) plus Line (5) plus Line (6) plus Line (7)	
(9)	The following amounts:	
	(a) minority interests	
	(b) any gas balancing liabilities of the Borrower and its Subsidiaries reflected as a long-term liability in the Borrower's latest annual or quarterly financial statements	
	(c) the discounted future net revenue, calculated in accordance with SEC guideline (utilizing the prices utilized in the Borrower's year-end or quarterly reserve report, as applicable), attributable to reserves which are required to be delivered to third parties to fully satisfy the obligations of the Borrower and its Subsidiaries with respect to VPPs on the schedules specified with respect thereto	
	(d) the discounted future net revenue, calculated in accordance with SEC guidelines, attributable to reserves subject to DollarDenominated Production Payments which, based on the estimates of production included in determining the discounted future net revenue specified in Line (1) above (utilizing the prices utilized in the Borrower's year-end or quarterly reserve report, as applicable), would be necessary to fully satisfy the payment obligations of the Borrower and its Subsidiaries with respect to DollarDenominated Production Payments on the schedules specified with respect thereto	
	(e) the discounted future net revenue, calculated in accordance with SEC guidelines (utilizing the same prices utilized in the Borrower's year-end or quarterly reserve report, as applicable), attributable to reserves subject to participation interests, overriding royalty interests or other interests of third parties, pursuant to participation, partnership, vendor financing or other agreements then in effect, or which otherwise are required to be delivered to third parties	
(10)	Line (9)(a) plus Line (9)(b) plus Line (9)(c) plus Line (9)(d) plus Line (9)(e)	
(11)	Total of Line (8) minus Line (10)	

B. **Free Cash Flow**

	Free Cash Flow	**As of the end of the Compliance Period**
(1)	The following amounts:	
	(a) EBITDAX of the Borrower and the other Credit Parties for the Specified Period (See Schedule 1 to Annex A)[12]	
	(b) the aggregate net cash proceeds received by the Borrower from the issuance of its Stock not constituting Disqualified Stock	
(2)	Line (1)(a) plus Line (1)(b)	
(3)	The following amounts, without duplication, paid during such Specified Period	
	(a) voluntary and scheduled cash prepayments and repayments of Indebtedness (other than the Tranche A Loans) which cannot be reborrowed pursuant to the terms of such Indebtedness (other than to the extent funded or financed with net cash proceeds from Indebtedness permitted under the Credit Agreement)	
	(b) capital expenditures paid in cash	
	(c) changes in cash working capital	
	(d) consolidated interest expenses determined in accordance with GAAP and paid in cash	
	(e) income taxes paid in cash	
	(f) exploration and development expenses or costs paid in cash	
	(g) (A) Investments made in cash (other than to any Credit Party) (other than those made in reliance on Section 9.06(b) or Section 9.06(r)) and (B) Restricted Payments made in cash (other than to any Credit Party) (other than those made in reliance on Section 9.04(f) or Section 9.04(g))	
	(h) to the extent not included in the foregoing and added back in the calculation of EBITDAX, any other cash charge (other than those described in Line (2)(f) of Schedule 1 to Annex A) that reduces the earnings of the Borrower and the other Credit Parties	

[12] Specified Period means the period beginning on the Effective Date and ending on the last day of the most recently ended fiscal period for which financial statements have been delivered in connection with the Credit Agreement

(4)	Line (3)(a) plus Line (3)(b) plus Line (3)(c) plus Line (3)(d) plus Line (3)(e) plus Line (3)(f) plus Line (3)(g) plus Line (3)(h)	
(5)	the sum, in each case without duplication, of any non-cash amounts that were deducted from or otherwise served to decrease EBITDAX for such Specified Period	
(6)	any net cash proceeds received from Dispositions not required to be applied to repay Indebtedness (including the Loans pursuant to Section 3.04(c)(iii))	
(7)	Total of Line (2) minus Line (4) plus Line (4) plus Line (5) plus Line (6)	

C. **Distributable Free Cash Flow**

	Distributable Free Cash Flow[13]	**As of the end of the Compliance Period**
(1)	The aggregate amount of Free Cash Flow that has been generated since the Effective Date (See Section B)	
(2)	the aggregate amount of the following that have occurred since the Effective Date	
	(a) Restricted Payments made pursuant to Section 9.04(f) or Section 9.04(g) of the Credit Agreement	
	(b) Redemptions of Permitted Additional Debt or Other Secured Debt made pursuant to Section 9.05(a)(iii) of the Credit Agreement	
	(c) Investments made pursuant to Section 9.06(r) of the Credit Agreement	
(3)	Line (2)(a) plus Line (2)(b) plus Line (2)(c)	
(4)	Total of Line (1) minus Line (3)	

[13] For the avoidance of doubt, any amount deducted in calculating Distributable Free Cash Flow as of any date of determination shall be without duplication of amounts deducted in calculating Free Cash Flow for purposes of such calculation of Distributable Free Cash Flow.

EXHIBIT E

SECURITY INSTRUMENTS AS OF THE EFFECTIVE DATE

The Security Instruments in existence as of the Effective Date are as follows:

1. That certain Guaranty and Collateral Agreement, dated as of the Effective Date, among the Credit Parties and the Collateral Agent.

2. That certain Deed of Trust, Mortgage, Fixture Filing, Assignment of As Extracted Collateral, Security Agreement and Financing Statement, dated as of the Effective Date, from [_____], as Trustor, to the Collateral Agent, as Beneficiary, to be filed in certain counties in the State of Texas.

3. That certain Deed of Trust, Mortgage, Fixture Filing, Assignment of As Extracted Collateral, Security Agreement and Financing Statement, dated as of the Effective Date, from [_____], as Trustor, to the Collateral Agent, as Beneficiary, to be filed in certain counties in the State of Pennsylvania.

4. That certain Deed of Trust, Mortgage, Fixture Filing, Assignment of As Extracted Collateral, Security Agreement and Financing Statement, dated as of the Effective Date, from [_____], as Trustor, to the Collateral Agent, as Beneficiary, to be filed in certain counties in the State of Louisiana.

5. That certain Deed of Trust, Mortgage, Fixture Filing, Assignment of As Extracted Collateral, Security Agreement and Financing Statement, dated as of the Effective Date, from [_____], as Trustor, to the Collateral Agent, as Beneficiary, to be filed in certain counties in the State of Wyoming.

6. UCC-1 Financing Statements in respect of the foregoing item 1.

7. Fixture and As-Extracted Collateral UCC-1 Financing Statements in respect of items 2 and 4.

8. All certificates representing any Equity Interests constituting Collateral, together with appropriate transfer powers indorsed in blank.

9. Blocked Account Control Agreement, dated as of the Effective Date, among Chesapeake Land Development Company, L.L.C., Compass Manufacturing, L.L.C., Chesapeake Operating, L.L.C., Chesapeake Energy Marketing, L.L.C., Midcon Compression, L.L.C., Chesapeake Exploration, L.L.C., Chesapeake Appalachia, L.L.C., Burleson Sand LLC, Chesapeake Energy Corporation, the Collateral Agent and JPMorgan Chase Bank, N.A. granting the Collateral Agent control over Deposit Accounts, Commodities Accounts and Securities Accounts (other than Excluded Accounts) maintained by such Credit Parties at JPMorgan Chase Bank, N.A..

10. Uncertificated Securities Account Control Agreement, dated as of the Effective Date, among Chesapeake Energy Corporation, the Collateral Agent and Goldman Sachs & Co. LLC granting the Collateral Agent control over Deposit Accounts, Commodities Accounts and Securities Accounts (other than Excluded Accounts) maintained by such Credit Parties at Goldman Sachs & Co. LLC.

11. Control Agreement, dated as of the Effective Date, among Chesapeake Energy Corporation, the Collateral Agent and DWS Service Company granting the Collateral Agent control over Deposit Accounts, Commodities Accounts and Securities Accounts (other than Excluded Accounts) maintained by such Credit Parties at DWS Service Company.

12. Deposit Account Control Agreement, dated as of the Effective Date, among [_____], the Collateral Agent and Wells Fargo Bank, National Association granting the Collateral Agent control over Deposit Accounts, Commodities Accounts and Securities Accounts (other than Excluded Accounts) maintained by such Credit Parties at Wells Fargo Bank, National Association.

Unless otherwise defined herein, each capitalized term used in this Exhibit E has the meaning assigned to such term in that certain Credit Agreement, dated as of February [_], 2021, among the Borrower, MUFG Bank, Ltd., as Administrative Agent, MUFG Union Bank, N.A., as Collateral Agent, the Lenders and other parties from time to time party thereto (as amended, amended and restated, supplemented or otherwise modified from time to time).

EXHIBIT F
[FORM OF] ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (this "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [*Insert name of Assignor*] (the "Assignor") and [*Insert name of Assignee*] (the "Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto (the "Standard Terms and Conditions") are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including any letters of credit and guarantees included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the "Assigned Interest"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor:
2. Assignee: [and is an Affiliate/Approved Fund of [*identify Lender*]][14]
3. Borrower: Chesapeake Energy Corporation, an Oklahoma corporation (the "Borrower")
4. Administrative Agent: MUFG Bank, Ltd., as the Administrative Agent under the Credit Agreement
5. Credit Agreement: Credit Agreement, dated as of February [_], 2021, among the Borrower, MUFG Bank, Ltd., as Administrative Agent, MUFG Union Bank, N.A., as Collateral Agent, and the Lenders and other parties from time to time party thereto
6. Assigned Interest:

Tranche [A][B] Commitment Assigned	Aggregate Amount of Tranche [A] [B] Commitment/Loans for all Lenders	Amount of Tranche [A] [B] Commitment/Loans Assigned	Percentage Assigned of Tranche [A] [B] Commitment/Loans[15]
	$	$	%
	$	$	%
	$	$	%

Effective Date: [ ], 20[ ] (the "Effective Date") [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: _____

Name: _____

Title: _____

[14] Select as applicable.

[15] Set forth, to at least 9 decimals, as a percentage of the Tranche A Commitment/Loans of all Lenders thereunder.

ASSIGNEE

[NAME OF ASSIGNEE]

By: _____
Name: _____
Title: _____

[Consented to and][16] Accepted:

MUFG BANK, LTD., as Administrative Agent

By: _____

Name: _____
Title: _____

[Consented to:][17]

[ ], as Issuing Bank

By: _____

Name: _____
Title: _____

[Consented to:][18]

[16] To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

[17] To be added only if the consent of the Issuing Banks is required by the terms of the Credit Agreement.

[18] To be added only if the consent of the Borrower is required by the terms of the Credit Agreement.

CHESAPEAKE ENERGY CORPORATION, a Delaware corporation

By: _____

Name: _____
Title: _____

Exhibit F

ANNEX 1

[ ][19]

STANDARD TERMS AND CONDITIONS FOR

ASSIGNMENT AND ASSUMPTION

1. Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it satisfies the requirements, if any, specified in the Credit Agreement and under applicable law that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) it is engaged in making, acquiring or holding commercial loans and in providing other facilities set forth herein as may be applicable to the Assignee in the ordinary course of business, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument (and the Assignee agrees not to assert a claim in contravention of the foregoing), (iv) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (v) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (vi) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 8.01 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent, the Assignor or any other Lender or any of their respective Related Parties, (vii) is not a Defaulting Lender, and (viii) attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender or any of their respective Related Parties, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

---

[19] Describe Credit Agreement at option of Administrative Agent.

3. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

4. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and the other parties to the Credit Agreement and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Acceptance and adoption of the terms of this Assignment and Assumption by the Assignee and the Assignor by Electronic Signature or delivery of an executed counterpart of a signature page of this Assignment and Assumption by any Approved Electronic Platform shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the laws of the State of New York.

EXHIBIT G-1

[FORM OF] U.S. TAX COMPLIANCE CERTIFICATE (FOREIGN LENDERS; NOT PARTNERSHIPS)

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement, dated as of February [_], 2021, among the Borrower, MUFG Bank, Ltd., as Administrative Agent, MUFG Union Bank, N.A., as Collateral Agent, and the Lenders and other parties from time to time party thereto (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"; unless otherwise defined herein, each capitalized term used herein has the meaning assigned to such term in the Credit Agreement).

Pursuant to the provisions of Section 5.03 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 881(c)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or W-8BEN-E, as applicable. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]
By:
Name:
Title:
Date: , 20[ ]

EXHIBIT G-2

[FORM OF] U.S. TAX COMPLIANCE CERTIFICATE (FOREIGN PARTICIPANTS; NOT PARTNERSHIPS)

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement, dated as of February [_], 2021, among the Borrower, MUFG Bank, Ltd., as Administrative Agent, MUFG Union Bank, N.A., as Collateral Agent, and the Lenders and other parties from time to time party thereto (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"; unless otherwise defined herein, each capitalized term used herein has the meaning assigned to such term in the Credit Agreement).

Pursuant to the provisions of Section 5.03 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or W-8BEN-E, as applicable. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]
By:
Name:
Title:
Date: , 20[ ]

EXHIBIT G-3

[FORM OF] U.S. TAX COMPLIANCE CERTIFICATE (FOREIGN PARTICIPANTS; PARTNERSHIPS)

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement, dated as of February [_], 2021, among the Borrower, MUFG Bank, Ltd., as Administrative Agent, MUFG Union Bank, N.A., as Collateral Agent, and the Lenders and other parties from time to time party thereto (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"; unless otherwise defined herein, each capitalized term used herein has the meaning assigned to such term in the Credit Agreement).

Pursuant to the provisions of Section 5.03 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 881(c)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or W-8BEN-E, as applicable, or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or W-8BEN-E, as applicable, from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]
By:
Name:
Title:
Date: , 20[ ]

EXHIBIT G-4

[FORM OF] U.S. TAX COMPLIANCE CERTIFICATE (FOREIGN LENDERS; PARTNERSHIPS)

(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement, dated as of February [_], 2021, among the Borrower, MUFG Bank, Ltd., as Administrative Agent, MUFG Union Bank, N.A., as Collateral Agent, and the Lenders and other parties from time to time party thereto (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"; unless otherwise defined herein, each capitalized term used herein has the meaning assigned to such term in the Credit Agreement).

Pursuant to the provisions of Section 5.03 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 881(c)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or W-8BEN-E, as applicable, or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or W-8BEN-E, as applicable, from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]
By:
Name:
Title:
Date: , 20[ ]

EXHIBIT H

FORM OF COMMITMENT INCREASE CERTIFICATE

[ ], 20[ ]

To: MUFG Bank, Ltd., as Administrative Agent

Chesapeake Energy Corporation, an Oklahoma corporation (the "Borrower"), the Administrative Agent, the Collateral Agent and the Lenders and other parties from time to time party thereto have heretofore entered into a Credit Agreement, dated as of February [_], 2021 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"). Capitalized terms used but not otherwise defined herein shall have the meaning given to such terms in the Credit Agreement.

This Commitment Increase Certificate is being delivered pursuant to Section 2.06(c)(ii)(J) of the Credit Agreement.

Please be advised that the undersigned Lender has agreed (a) to increase its Tranche A Commitment under the Credit Agreement effective [ ], 20[ ] (the "Increase Effective Date") from $[ ] to $[ ] and (b) that it shall continue to be a party in all respects to the Credit Agreement and the other Loan Documents.

With reference to Section 2.06(c)(iii) of the Credit Agreement, the Borrower hereby confirms that [Check Applicable Box]:

☐ There are or, if the Increase Effective Date is after the date hereof, there will be, no Borrowings of LIBOR Loans outstanding on the Increase Effective Date.

☐ There are or, if the Increase Effective Date is after the date hereof, there will be, Borrowings of LIBOR Loans outstanding on the Increase Effective Date and the Borrower will pay any compensation required by Section 5.02 of the Credit Agreement on the Increase Effective Date.

The Borrower hereby represents and warrants that each condition set forth in Section 2.06(c)(ii) is satisfied with respect to the contemplated increase in the Total Tranche A Commitment as of the Increase Effective Date.

Very truly yours,

CHESAPEAKE ENERGY CORPORATION, an Oklahoma corporation

By: _____

Name: _____

Title: _____

Accepted and Agreed:

MUFG BANK, LTD., as Administrative Agent

By: _____

Name: _____
Title: _____

Accepted and Agreed:

[Name of Increasing Lender]

By: _____

Name: _____
Title: _____

Exhibit H

EXHIBIT I

[FORM OF] ADDITIONAL LENDER CERTIFICATE

[ ], 20[ ]

To: MUFG Bank, Ltd., as Administrative Agent

Chesapeake Energy Corporation, an Oklahoma corporation (the "Borrower"), the Administrative Agent, the Collateral Agent and the Lenders and other parties from time to time party thereto have heretofore entered into a Credit Agreement, dated as of February [_], 2021 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"). Capitalized terms used but not otherwise defined herein shall have the meaning given to such terms in the Credit Agreement.

This Additional Lender Certificate is being delivered pursuant to Section 2.06(c)(ii)(K) of the Credit Agreement.

Please be advised that the undersigned Additional Lender has agreed (a) to become a Lender under the Credit Agreement effective [ ], 20[ ] (the "Additional Lender Effective Date") with a Tranche A Commitment of $[ ] and (b) that it shall be a party in all respects to the Credit Agreement and the other Loan Documents.

This Additional Lender Certificate is being delivered to the Administrative Agent together with (a) if the Additional Lender is a Foreign Lender, any documentation required to be delivered by such Additional Lender pursuant to Section 5.03(g) of the Credit Agreement, duly completed and executed by the Additional Lender, and (b) an Administrative Questionnaire in the form supplied by the Administrative Agent, duly completed by the Additional Lender. [The [*Borrower/Additional Lender*] shall pay the processing and recordation fee payable to the Administrative Agent pursuant to Section 2.06(c)(ii)(K) of the Credit Agreement.][20]

With reference to Section 2.06(c)(iii) of the Credit Agreement, the Borrower hereby confirms that [Check Applicable Box]:

☐ There are or, if the Additional Lender Effective Date is after the date hereof, there will be, no Borrowings of LIBOR Loans outstanding on the Additional Lender Effective Date.

☐ There are or, if the Additional Lender Effective Date is after the date hereof, there will be, Borrowings of LIBOR Loans outstanding on the Additional Lender Effective Date and the Borrower will pay any compensation required by Section 5.02 of the Credit Agreement on the Additional Lender Effective Date.

The Borrower hereby represents and warrants that each condition set forth in Section 2.06(c)(ii) is satisfied with respect to the contemplated increase in the Total Tranche A Commitment as of the Additional Lender Effective Date.

[20] Include, if applicable.

Very truly yours,

CHESAPEAKE ENERGY CORPORATION, an Oklahoma corporation

By: _____

Name: _____

Title: _____

Exhibit I

Accepted and Agreed:

MUFG BANK, LTD., as Administrative Agent

By: _____

Name: _____
Title: _____

Accepted and Agreed:

[Name of Additional Lender]

By: _____

Name: _____
Title: _____

Exhibit I

EXHIBIT J

[FORM OF] SOLVENCY CERTIFICATE

[•][•], 20[•]

This Solvency Certificate is being executed and delivered pursuant to Section 6.01(j) of that certain Credit Agreement, dated as of February [_], 2021, among Chesapeake Energy Corporation, an Oklahoma corporation (the "Borrower"), MUFG Bank, Ltd., as Administrative Agent, MUFG Union Bank, N.A., as Collateral Agent, the Lenders and other parties from time to time party thereto (the "Credit Agreement"; the terms defined therein being used herein as therein defined).

I, [•], the [Chief Financial Officer/equivalent officer] of the Borrower, in such capacity and not in an individual capacity, hereby certify as follows:

1. I am generally familiar with the businesses and assets of the Borrower and its Restricted Subsidiaries, taken as a whole, and am duly authorized to execute this Solvency Certificate on behalf of the Borrower pursuant to the Credit Agreement; and
2. As of the date hereof and after giving effect to the Transactions and the incurrence of the indebtedness and obligations being incurred in connection with the Credit Agreement and the Transactions, that, (i) the sum of the debt (including contingent liabilities) of the Borrower and its subsidiaries, taken as a whole, does not exceed the fair value of the assets of the Borrower and its subsidiaries, taken as a whole; (ii) the capital of the Borrower and its subsidiaries, taken as a whole, is not unreasonably small in relation to the business of the Borrower or its subsidiaries, taken as a whole, contemplated as of the date hereof; and (iii) the Borrower and its subsidiaries, taken as a whole, do not intend to incur, or believe that they will incur, debts (including current obligations and contingent liabilities) beyond their ability to pay such debts as they mature in the ordinary course of business. For the purposes hereof, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, I have executed this Solvency Certificate on the date first written above.

By: _____

Name: [ ]
Title: [Chief Financial Officer/equivalent officer]

Exhibit J

Exhibit 10.2

REGISTRATION RIGHTS AGREEMENT

by and among

CHESAPEAKE ENERGY CORPORATION

and

THE HOLDERS PARTY HERETO

Dated as of February 9, 2021

TABLE OF CONTENTS

REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (this "**Agreement**") is made as of February 9, 2021 by and among Chesapeake Energy Corporation (the "**Company**") and the Backstop Parties pursuant to the Plan of Reorganization (the "**Plan**") of Chesapeake Energy Corporation and certain of its debtor affiliates under Chapter 11 of Title 11 of the United States Code approved by the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "**Bankruptcy Court**"). Capitalized terms used but not otherwise defined herein are defined in Section 1 of this Agreement.

RECITALS:

WHEREAS, the Company proposes to issue the Common Stock and Warrants pursuant to, and upon the terms set forth in, the Plan to the Holders party hereto; and

WHEREAS, each of (i) the Company and (ii) the Backstop Parties desires to enter into this Agreement with respect to the rights, priorities and obligations set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Company and each of the Holders hereby agree as follows:

1. Definitions.

(a) As used herein, the following terms have the following meanings:

"**Affiliate**" of any particular Person means any other Person directly or indirectly controlling, controlled by or under common control with such Person within the meaning of Rule 405 promulgated under the Securities Act.

"**Automatic Shelf Registration Statement**" means an "automatic shelf registration statement" as defined in Rule 405 (or any successor rule then in effect) promulgated under the Securities Act.

"**Backstop Party**" means each of the parties to the Backstop Commitment Agreement with the Company dated as of June 28, 2020 (as it may be amended or supplemented from time to time) and any of their Related Persons.

"**beneficially owned**," "**beneficial ownership**" and similar phrases have the same meanings as such terms have under Rule 13d-3 and 13d-5 (or any successor rule then in effect) promulgated under the Exchange Act.

"**Business Day**" means any day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by applicable law or executive order to close.

"**Capital Stock**" means with respect to a corporation, any and all shares, interests or equivalents in capital stock of such corporation (whether voting or nonvoting and whether common or preferred) and any and all warrants, rights (including conversion and exchange rights) and options to purchase any such shares, interests or equivalents (including convertible debt).

"**Commission**" means the United States Securities and Exchange Commission or any successor governmental agency.

"**Common Stock**" means the shares of common stock, par value $0.01 per share, of the Company issued on or after the Effective Date.

"**Counsel to the Holders**" means the one law firm or other legal counsel to the Holders, which counsel shall be Davis Polk & Wardwell LLP, or such other counsel selected: (i) in the case of a Demand Registration, by the Holders beneficially owning a majority of the Registrable Securities included in the initial request for such Demand Registration; or (ii) in the case of a Piggyback Registration, the Holders beneficially owning a majority of the Registrable Securities requested to be included in such Piggyback Registration.

"**EDGAR**" means the Electronic Data Gathering, Analysis and Retrieval System of the Commission.

"**Effective Date**" has the meaning assigned to such term in the Plan, and is the date hereof.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended from time to time.

"**Excluded Registration**" means a registration of the Company's securities: (i) pursuant to a Registration Statement on Form S-8 (or other registration solely relating to an offering or sale to employees or directors of the Company pursuant to any equity incentive plan, stock option, stock purchase or similar plan or employee benefit arrangement), (ii) pursuant to a Registration Statement on Form S-4 (or similar form that relates to a transaction subject to Rule 145 under the Securities Act or any successor rule thereto) or any registration statement related to the issuance or resale of securities issued in such a transaction or other transaction in which the Company directly or indirectly acquires another business entity, (iii) in connection with any dividend or distribution reinvestment (or similar plan), (iv) in which the only Capital Stock being registered is Capital Stock issuable upon conversion of debt securities or (v) a registration on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of any of the Registrable Securities.

"**FINRA**" means the Financial Industry Regulatory Authority or any successor regulatory authority.

"**Free Writing Prospectus**" means any "free writing prospectus" as defined in Rule 405 promulgated under the Securities Act.

"**Holder**" means (i) any Backstop Party or Related Person that beneficially owns Registrable Securities and is a party to this Agreement (for the avoidance of doubt, any such Backstop Party or Related Person may become a party to this Agreement at its request at any time), or (ii) any other party to any Joinder, in each case, that, together with its Related Persons, beneficially owns Registrable Securities.

"**Issuer Free Writing Prospectus**" means an issuer free writing prospectus as defined in Rule 433 under the Securities Act.

"**Joinder**" a joinder agreement in the form of Annex A executed and delivered to the Company pursuant to Section 11.

"**Majority Holders**" means Holders who collectively have beneficial ownership of at least a majority of the Registrable Securities.

"**National Securities Exchange**" means The Nasdaq Global Market, The Nasdaq Global Select Market or The New York Stock Exchange.

"Overnight Underwritten Offering" means an underwritten offering that is launched after the close of trading on one trading day and priced before the open of trading on the next succeeding trading day.

"Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, a governmental entity or any department, agency or political subdivision thereof or any other entity.

"**Prospectus**" means the prospectus or prospectuses included in any Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective Registration Statement in reliance on Rule 430A under the Securities Act or any successor rule thereto), as amended or supplemented by any prospectus supplement with respect to the terms of the offering of any portion of the Registrable Securities covered by such Registration Statement and by all other amendments and supplements to the prospectus, including post-effective amendments and all material incorporated by reference in such prospectus or prospectuses.

"**Public Offering**" means any sale or distribution to the public of Capital Stock of the Company (or any securities convertible into, or exercisable or exchangeable for, Capital Stock of the Company) pursuant to a registration statement filed with the Commission.

"**Registrable Securities**" means, collectively, (a) as of the Effective Date, all shares of Common Stock and Warrants issued pursuant to the Plan to any Holder or to any Related Person of a Holder, either directly or pursuant to a joinder or assignment, and all shares of Common Stock issued or issuable to any Holder or Related Person of any Holder upon the exercise of Warrants after the Effective Date and (b) any additional shares of Common Stock issued as, or issued upon the conversion or exercise of any warrant, right, or other security that is issued in connection with, a dividend or other distribution with respect to, or in exchange for or in replacement of, the shares and Warrants described under clause (a); *provided*, *however*, that as to any Registrable Securities, such securities shall irrevocably cease to constitute Registrable

Securities upon the earliest to occur of: (A) the date on which such securities have been disposed of pursuant to an effective registration statement under the Securities Act or Rule 144; (B) the date on which securities are sold in a private transaction in which the transferor's rights under this Agreement are not assigned; (C) the Holder of such Registrable Securities, together with all Related Persons of such Holder, collectively owns less than one percent (1%) of the outstanding shares of Common Stock on a fully diluted basis, and all such Holder's and such Holder's Related Persons' Registrable Securities can be sold in a single day without registration or any volume, notice, manner of sale, legend or other restriction pursuant to, and in accordance with, Rule 144; and (D) the date on which such securities cease to be outstanding.

"**Registration Statement**" means any registration statement of the Company, including the Prospectus, amendments and supplements to such registration statement, including post-effective amendments, all exhibits and all material incorporated by reference in such registration statement.

"**Related Person**" means, with respect to a Holder, any Affiliates (including at the institutional level) of such Holder or any special purpose investment vehicles, investment accounts or funds managed, advised or sub-advised by such Holder, an Affiliate of such Holder or by the same investment manager, advisor or sub-advisor as such Holder or an Affiliate of such Holder.

"**Rule 144**" means Rule 144 promulgated under the Securities Act (or any successor rule then in effect).

"**Same-Day Offering**" means an underwritten offering that is launched before the open of trading on one trading day and priced before the open of trading or after the close of trading on such same trading day.

"**Securities Act**" means the Securities Act of 1933, as amended from time to time.

"**Warrants**" means, collectively, (i) those certain Class A warrants to purchase shares of Common Stock issued pursuant to that certain Class A Warrant Agreement, by and among the Company and the warrant agent named therein, dated as of date hereof; (ii) those certain Class B warrants to purchase shares of Common Stock issued pursuant to that certain Class B Warrant Agreement, by and among the Company and the warrant agent named therein, dated as of date hereof; and (iii) those certain Class C warrants to purchase shares of Common Stock issued pursuant to that certain Class C Warrant Agreement, by and among the Company and the warrant agent named therein, dated as of date hereof.

"**Well-Known Seasoned Issuer**" means a "well-known seasoned issuer" as defined in Rule 405 promulgated under the Securities Act (or any successor rule then in effect) and which (i) is a "well-known seasoned issuer" under paragraph (1)(i)(A) of such definition or (ii) is a "well-known seasoned issuer" under paragraph (1)(i)(B) of such definition and is also eligible to register a primary offering of its securities relying on General Instruction I.B.1 of Form S-3 or Form F-3 under the Securities Act.

(b) Each of the following terms is defined in the Section set forth opposite such term:

Term	**Section**
Agreement	Preamble
Bankruptcy Court	Preamble
Company	Preamble
Company Demand Registration Notice	3(b)
Company Shelf Registration Notice	2(a)
Demand Registration	3(a)
Demand Registration Notice	3(b)
Determination Date	2(c)
End of Suspension Notice	5(b)
Form S-1 Resale Shelf	2(a)
Form S-3 Resale Shelf	2(a)
Long-Form Registration	3(a)
Losses	10(a)
MNPI	5(a)
Opt-In Election	7(e)
Opt-Out Election	7(e)
Permitted Free Writing Prospectus	7(a)
Piggyback Registration	4(a)
Piggyback Registration Notice	4(a)
Plan	Preamble
Policies	7(e)
Registration Expenses	8(a)
Representatives	7(e)
Required Period	2(a)
Resale Shelf Registration Statement	2(a)
road show	10(a)
Short-Form Registration	3(a)
Suspension Event	5(b)
Suspension Notice	5(b)
Withdrawal Request	5(d)

2. Resale Shelf Registration Statement.

(a) Resale Shelf Registration Statement. As soon following the Effective Date as is permissible under the applicable rules and regulations of the SEC and in any event within thirty (30) calendar days of the Effective Date (or if "fresh start" accounting is required, within ninety (90) calendar days of the Effective Date), the Company shall use commercially reasonable efforts to file or confidentially submit, and to cause to be declared effective on the earliest date reasonably practicable, a Resale Shelf Registration Statement (the "**Resale Shelf Registration Statement**") (whether on Form S-3 (a "**Form S-3 Resale Shelf**") or on Form S-1 (a "**Form S-1 Resale Shelf**")) with the SEC covering the resale of all of the Registrable Securities. The

Company shall give written notice (a "**Company Shelf Registration Notice**") of the anticipated filing of any Resale Shelf Registration Statement within ten (10) Business Days prior to such filing or submission to all Holders of Registrable Securities and shall include in such Resale Shelf Registration Statement all Registrable Securities held by Holders on the date of the Company Shelf Registration Notice with respect to which the Company has received written requests for inclusion therein within five (5) Business Days of the date of the Company Shelf Registration Notice. The Company shall use commercially reasonable efforts to cause such Resale Shelf Registration Statement to remain effective until the earlier of (i) the date on which all Registrable Securities hereunder are no longer Registrable Securities; and (ii) the time that Registrable Securities issued to the Holders may be sold by such Persons in a single transaction without limitation under Rule 144 (the "**Required Period**"). The Company shall maintain the Resale Shelf Registration Statement in accordance with the terms hereof. If the Resale Shelf Registration Statement is expected to expire under the rules of the Commission, the Company will use commercially reasonable efforts to file a replacement Resale Shelf Registration Statement and cause it to become effective before such expiration and will follow the procedures and timelines outlined in this Section 1(a) with respect to inclusion of the Registrable Securities therein.

(b) Conversion to Form S-3. The Company shall use commercially reasonable efforts to convert any Form S-1 Resale Shelf to a Form S-3 Resale Shelf as soon as reasonably practicable after the Company is eligible to use Form S-3.

(c) Automatic Shelf Registration. Upon the Company becoming a Well-Known Seasoned Issuer, the Company shall, as promptly as practicable, register, under an Automatic Shelf Registration Statement, the resale of all of the Registrable Securities in accordance with the terms of this Agreement. The Company shall use commercially reasonable efforts to file such Automatic Shelf Registration Statement as promptly as practicable, but in no event later than 30 calendar days after it becomes a Well-Known Seasoned Issuer, and to cause such Automatic Shelf Registration Statement to remain effective thereafter until the end of the Required Period (including filing replacement Automatic Shelf Registration Statements as necessary under applicable Commission rules and regulations). The Company shall give written notice of filing such Automatic Shelf Registration Statement to all of the Holders as promptly as practicable thereafter. If at any time after the filing of an Automatic Shelf Registration Statement the Company is no longer a Well-Known Seasoned Issuer (the "**Determination Date**"), the Company shall (A) as promptly as practicable give written notice thereof to all of the Holders and (B) within 30 calendar days after such Determination Date, file a Resale Shelf Registration Statement on an appropriate form (or a post-effective amendment converting the Automatic Shelf Registration Statement to an appropriate form) covering all of the Registrable Securities, and use commercially reasonable efforts to have such Registration Statement declared effective as promptly as reasonably practicable. In such event, the requirements to keep such Resale Shelf Registration Statement (or a replacement) effective for the Required Period and the other requirements specified under Section 2(a) shall apply.

3. Demand Registration.

(a) Requests for Registration. At any time and from time to time on or following the Effective Date, the Holders may request registration under the Securities Act of all or any portion of the Registrable Securities beneficially owned by such Holders (i) on Form S-1

(or any successor form then in effect) (a "**Long-Form Registration**") or (ii) on Form S-3 or any similar short-form registration (a "**Short-Form Registration**"), if available (any registration under this Section 3(a), a "**Demand Registration**"); *provided*, that the Company will not be required to take any action pursuant to this Section 3(a): (A) if a Long-Form Registration, within the ninety (90) calendar day period or, if a Short-Form Registration, within the sixty (60) calendar day period, in each case, preceding the date of a previous Demand Registration Notice so long as: (1) the Company effected such Demand Registration, such Holders that had made an Opt-In Election received notice of such Demand Registration, and such Holders that elected to participate were able to register and sell pursuant to such Demand Registration all of the Registrable Securities requested to be included in such registration either at the time of the registration or within 30 calendar days thereafter and (2) such Demand Registration was not subject to a Withdrawal Request; (B) if such Demand Registration is not expected to yield aggregate gross proceeds of at least $50 million, or (C) the number of Demand Registration requests made pursuant to this Section 3(a) in the aggregate would exceed two in any 12-month period, *provided however*, that, a Demand Registration request shall not be considered made for purpose of this Clause (C) unless the requested Registration Statement has been declared effective for the full amount of Registrable Securities for which registration has been requested.

(b) Demand Registration Notices. All requests for Demand Registrations shall be made by giving written notice to the Company (the "**Demand Registration Notice**"). Each Demand Registration Notice shall specify (i) whether such Demand Registration shall be an underwritten Public Offering and (ii) the approximate number of Registrable Securities proposed to be sold in the Demand Registration. The Company shall promptly give written notice (a "**Company Demand Registration Notice**") of the filing of a Registration Statement pursuant to this Section 3 to all of the Holders that have made Opt-In Elections not less than five (5) Business Days before such filing and, subject to the provisions of Section 3(d) below, shall include in such Demand Registration all Registrable Securities beneficially owned by Holders on the date of the Company Demand Registration Notice with respect to which the Company has received written requests for inclusion therein within five (5) Business Days after the date of the Company Demand Registration Notice.

(c) Short-Form Registrations; Existing Registration Statements. Demand Registrations shall be Short-Form Registrations whenever the Company is permitted to use any applicable short form registration statement under the rules and regulations of the Securities Act, unless the underwriters, in their reasonable discretion, determine that the use of a Long-Form Registration is necessary in order for the successful offering of such Registrable Securities. Promptly after the Company has become eligible to use Form S-3 under the Securities Act, the Company shall use commercially reasonable efforts to make Short-Form Registrations on Form S-3 (or any successor form) available for the resale of Registrable Securities on a continuous or delayed basis. For the avoidance of doubt, the Company may decide to effect a Demand Registration on a registration statement, including the Resale Shelf Registration Statement, that has been previously filed with the Commission provided such registration statement has sufficient registered securities (including if increased by an amendment). Any offer or sale of Registrable Securities pursuant to a Resale Shelf Registration Statement or an Automatic Shelf Registration Statement in any underwritten Public Offering shall be deemed to be a Demand Registration subject to the provisions of this Section 3.

(d) Priority on Demand Registrations. If the Demand Registration is an underwritten Public Offering and the managing underwriters for such Demand Registration advise the Company and applicable Holders in writing that in their opinion the number of Registrable Securities and, if permitted hereunder, other securities requested to be included in such Demand Registration exceeds the number of Registrable Securities and other securities, if any, which can be sold without adversely affecting the marketability, proposed offering price range acceptable to the Holders beneficially owning a majority of the Registrable Securities initially requested to be included in the Demand Registration, timing or method of distribution of the offering, the Company shall include in such Demand Registration the number of Registrable Securities which can be sold without such adverse effect in the following order of priority: (i) *first*, the Registrable Securities beneficially owned by Holders requested to be included in such Demand Registration, allocated *pro rata* among the respective Holders beneficially owning such Registrable Securities on the basis of the number of Registrable Securities beneficially owned by each such Holder; (ii) *second*, any securities to be sold by the Company for its own account requested to be included in such Demand Registration by the Company; and (iii) *third*, other securities requested to be included in such Demand Registration to the extent permitted hereunder; *provided* that the Company shall not include in any Demand Registration any such securities pursuant to the foregoing clause (iii) which are not Registrable Securities without the prior written consent of the Holders beneficially owning a majority of the Registrable Securities initially requested to be included in such Demand Registration.

(e) Selection of Underwriters. The Holders beneficially owning a majority of the Registrable Securities initially requesting a Demand Registration which is an underwritten Public Offering shall have the right to select the managing underwriters (which shall consist of one or more reputable nationally recognized investment banks) to administer the Public Offering after consultation with the Company.

4. Piggyback Registration.

(a) Right to Piggyback. Whenever the Company proposes to conduct a Public Offering of any class of the Company's Capital Stock solely for cash (whether or not wholly a primary or secondary offering but except for a Demand Registration or Excluded Registration, a "**Piggyback Registration**"), the Company shall give prompt written notice to all Holders that have made Opt-In Elections of its intention to effect such Piggyback Registration (the "**Piggyback Registration Notice**") and (i) in the case of a Piggyback Registration pursuant to an Automatic Shelf Registration Statement, such Piggyback Registration Notice shall be given (A) not less than five (5) Business Days prior to the expected date of commencement of marketing efforts for such Public Offering or (B) three (3) Business Days in the case of an Overnight Underwritten Offering, Same-Day Offering or similar "bought deal," and (ii) in the case of any other Piggyback Registration, such Piggyback Registration Notice shall be given (A) not less than five (5) Business Days after the public filing of such Registration Statement, or (B) three (3) Business Days in the case of an Overnight Underwritten Offering, Same-Day Offering or similar "bought deal." The Company shall, subject to the provisions of Section 4(b) below, include in such Piggyback Registration, as applicable, all Registrable Securities beneficially owned by Holders on the date of the Piggyback Registration Notice with respect to which the Company has received written requests for inclusion therein within (i) five (5) Business Days after the date of the Piggyback Registration Notice or (ii) three (3) Business Days in the case of an Overnight Underwritten Offering, Same-Day Offering or similar "bought deal."

(b) Priority on Piggyback Registrations. For any Piggyback Registration that includes an underwritten Public Offering and the managing underwriters advise the Company in writing that in their reasonable opinion the number of securities requested to be included in such Piggyback Registration exceeds the number of Registrable Securities and other securities, if any, which can be sold without adversely affecting the marketability, proposed offering price range acceptable to the Holders beneficially owning a majority of the Registrable Securities requested to be included in such Piggyback Registration, timing or method of distribution of the offering, the Company shall include in such Piggyback Registration the number of Registrable Securities which can be sold without such adverse effect in the following order of priority: (i) *first*, if the Piggyback Registration includes a primary offering of Company securities for the Company's own account, the securities offered by the Company thereby; (ii) *second*, the Registrable Securities requested to be included in such Piggyback Registration by the Holders allocated *pro rata* among the Holders on the basis of the number of Registrable Securities beneficially owned by each Holder; and (iii) *third*, other securities requested to be included in such Piggyback Registration, if any.

(c) Selection of Underwriters. For any Piggyback Registration that includes an underwritten Public Offering, the Company shall have the right to select the managing underwriters to administer the Public Offering (which shall consist of one or more reputable nationally recognized investment banks).

5. Suspensions; Withdrawals; Notices.

(a) Suspensions. The Company may postpone, for up to 90 calendar days from the date of a Demand Registration Notice, the filing or the effectiveness of a Registration Statement for a Demand Registration or suspend the use of a Prospectus that is part of the Resale Shelf Registration Statement for up to 90 calendar days from the date of the Suspension Notice and therefore suspend sales of Registrable Securities included therein by providing written notice to the Holders included in such registration if the Company shall have furnished to the Holders a certificate signed by the Chief Executive Officer (or other authorized officer) of the Company stating that the Company's Board of Directors has determined in its reasonable good faith judgment that the offer or sale of Registrable Securities should be suspended; *provided* that the Company may not invoke a delay pursuant to this Section 5(a) more than twice or for more than 120 calendar days in the aggregate, in each case, in any 12-month period. The Company may invoke this Section 5(a) only if the Company's Board of Directors determines in good faith, after consultation with its advisors or legal counsel, that the offer or sale of Registrable Securities would reasonably be expected to: (i) materially interfere with a significant merger, acquisition, disposition, corporate reorganization, or other similar transaction involving the Company or any of its subsidiaries; or (ii) require premature disclosure of material non-public information ("**MNPI**") that the Company has a *bona fide* business purpose for preserving as confidential. Furthermore, the Company shall not be required to effect any registration pursuant to this Agreement while awaiting the Commission to declare the effectiveness of a registration statement of the Company.

(b) In the case of an event that causes the Company to suspend the use of a Registration Statement as set forth in Section 5(a) or Section 6(a)(vi)(A), (a "**Suspension Event**"), the Company shall give a notice to the Holders of Registrable Securities included in such Registration Statement (a "**Suspension Notice**") to suspend sales of the Registrable

Securities and such notice shall state that such suspension shall continue only for so long as the Suspension Event or its effect is continuing. The Company shall not include any MNPI in the Suspension Notice or otherwise provide such information to a Holder unless specifically requested by a Holder in writing. A Holder shall not sell any Registrable Securities pursuant to such Registration Statement (or such filings) at any time after it has received a Suspension Notice from the Company and prior to receipt of an End of Suspension Notice. Holders may recommence sales of Registrable Securities pursuant to the Registration Statement (or such filings) following further written notice to such effect (an "**End of Suspension Notice**") from the Company, and such End of Suspension Notice shall be given by the Company to the Holders and Counsel to the Holders promptly following the conclusion of any Suspension Event.

(c) Time Extension. Notwithstanding any provision herein to the contrary, if the Company gives a Suspension Notice with respect to any Registration Statement pursuant to this Section 5, the Company agrees that it shall (i) extend the required effective period for which the effectiveness of such Registration Statement shall be maintained pursuant to this Agreement by the number of days during the period from the date of receipt by the Holders of the Suspension Notice to and including the date of receipt by the Holders of the End of Suspension Notice; and (ii) provide copies of any supplemented or amended prospectus necessary to resume sales, with respect to each Suspension Event; *provided* that such period of time shall not be extended beyond the date that there are no longer Registrable Securities covered by such Registration Statement.

(d) Withdrawal Requests. At any time prior to the effective date of a Registration Statement, the Holders may withdraw such demand or request for registration (a "**Withdrawal Request**") by providing written notice of such withdrawal to the Company. The Company shall pay all Registration Expenses in connection with any Registration Statement subject to a Withdrawal Request. Any Holder may withdraw its request for inclusion of Registrable Securities in a Registration Statement by giving written notice to the Company of its intention to remove its Registrable Securities from such Registration Statement within two (2) Business Days before the earlier of (i) the expected date of the commencement of marketing efforts for the Public Offering in connection with such Registration Statement or (ii) the effectiveness of the Registration Statement.

6. Company Undertakings.

(a) Whenever Registrable Securities are registered pursuant to this Agreement, the Company shall use commercially reasonable efforts to effect the registration and the sale of such Registrable Securities as soon as reasonably practicable in accordance with the intended method of disposition thereof, and pursuant thereto the Company shall as promptly as reasonably practicable:

(i) with respect to a Demand Registration, prepare and file with the Commission a Registration Statement with regard to the related Registrable Securities as soon as reasonably practicable but not later than 30 calendar days of its receipt of an applicable notice from the Holders (unless the Registration Statement would be required pursuant to the rules and regulations of the Securities Act to include any audited or unaudited consolidated or pro forma financial statements that are not then currently available, in which case, promptly after such

financial statements are available) and use commercially reasonable efforts to cause such Registration Statement to become effective as soon thereafter as is reasonably practicable;

(ii) before filing a Registration Statement or Prospectus or any amendments or supplements thereto, furnish to the Holders whose Registrable Securities are requested to be included in the Registration Statement copies of all such documents, other than exhibits, documents that are incorporated by reference and such documents that are otherwise publicly available on EDGAR, proposed to be filed and such other documents reasonably requested by such Holders and provide Counsel to the Holders with a reasonable opportunity to review and comment on such documents of no less than two (2) Business Days;

(iii) notify each Holder of the effectiveness of each Registration Statement and prepare and file with the Commission such amendments and supplements to such Registration Statement as may be necessary to keep such Registration Statement effective for a period of not less than (A) 90 calendar days in the case of a Demand Registration or (B) in the case of a Resale Shelf Registration Statement, for the Required Period;

(iv) furnish to each seller of Registrable Securities, and the managing underwriters, without charge, such number of copies of the applicable Registration Statement, each amendment and supplement thereto, the Prospectus included in such Registration Statement (including each preliminary Prospectus, final Prospectus, and any other Prospectus (including any Prospectus filed under Rule 424, Rule 430A or Rule 430B promulgated under the Securities Act and any Issuer Free Writing Prospectus)), all exhibits and other documents filed therewith and such other documents as such seller or such managing underwriters may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such seller, and upon request, a copy of any and all transmittal letters or other correspondence to or received from, the Commission or any other governmental authority relating to such offer;

(v) (A) register or qualify such Registrable Securities under such other securities or blue sky laws of such jurisdictions as any seller reasonably requests in writing, (B) keep such registration or qualification in effect for so long as such Registration Statement remains in effect, and (C) do any and all other acts and things which may be reasonably necessary or advisable to enable such seller to consummate the disposition in such jurisdictions of the Registrable Securities owned by such seller (*provided* that the Company shall not be required to (x) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this subsection, (y) subject itself to taxation in any such jurisdiction or (z) consent to general service of process in any such jurisdiction);

(vi) notify each seller of such Registrable Securities, the managing underwriters and Counsel to the Holders (A) at any time when a Prospectus relating to the applicable Registration Statement is required to be delivered under the Securities Act, (1) upon discovery that, or upon the happening of any event as a result of which, such Registration Statement, or the Prospectus or Issuer Free Writing Prospectus relating to such Registration Statement, or any document incorporated or deemed to be incorporated therein by reference, contains an untrue statement of a material fact or omits any material fact necessary to make the statements therein not misleading, and, at the request of any such seller, the Company shall promptly prepare a supplement or amendment to such Prospectus or Issuer Free Writing Prospectus, furnish a reasonable number of copies of such supplement or amendment to each

seller of such Registrable Securities, Counsel to the Holders and the managing underwriters and file such supplement or amendment with the Commission so that, as thereafter delivered to the purchasers of such Registrable Securities, such Prospectus or Issuer Free Writing Prospectus as so amended or supplemented shall not contain an untrue statement of a material fact or omit to state any fact necessary to make the statements therein not misleading, (2) as soon as the Company becomes aware of any comments or inquiries by the Commission or any requests by the Commission or any federal or state governmental authority for amendments or supplements to a Registration Statement or related Prospectus or Issuer Free Writing Prospectus covering Registrable Securities or for additional information relating thereto, (3) as soon as the Company becomes aware of the issuance or threatened issuance by the Commission of any stop order suspending or threatening to suspend the effectiveness of a Registration Statement covering the Registrable Securities or (4) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any Registrable Security for sale in any jurisdiction, or the initiation or threatening of any proceeding for such purpose; and (B) when each Registration Statement, Prospectus or any amendment or supplement thereto has been filed with the Commission and when each such Registration Statement (or any amendment or supplement) has become effective;

(vii) use commercially reasonable efforts to cause all such Registrable Securities (A) if the Common Stock is then listed on a National Securities Exchange or included for quotation in a recognized trading market, to continue to be so listed or included, and (B) to be registered with or approved by such other governmental agencies or authorities as may be necessary to enable the sellers thereof to consummate the disposition of the Registrable Securities;

(viii) provide and cause to be maintained a transfer agent and registrar for all such Registrable Securities from and after the effective date of the applicable Registration Statement;

(ix) in connection with any underwritten Public Offering:

(A) enter into and perform under such customary agreements (including underwriting agreements in customary form, including customary representations and warranties and provisions with respect to indemnification and contribution) and take all such other actions as the Holders beneficially owning a majority of the Registrable Securities initially requested to be sold or the underwriters, if any, reasonably request in order to expedite or facilitate the disposition of such Registrable Securities and provide reasonable cooperation, including causing appropriate officers to attend and participate in “road shows” and analyst or investor presentations and such other selling or other informational meetings organized by the underwriters, if any (taking into account the needs of the Company’s businesses and the responsibilities of such officers with respect thereto and the requirement of the marketing process); and

(B) use commercially reasonable efforts to obtain and cause to be furnished to each such Holder included in such underwritten

Public Offering and the managing underwriters a signed counterpart of (i) one or more comfort letters from the Company's independent public accountant(s) in customary form and covering such matters of the type customarily covered by comfort letters and (ii) a legal opinion (and negative assurance letter) of counsel to the Company addressed to the relevant underwriters and/or such Holders of Registrable Securities, in each case in customary form and covering such matters of the type customarily covered by such letters as the managing underwriters and/or Holders beneficially owning a majority of the Registrable Securities initially requested to be included in such underwritten Public Offering reasonably request;

(x) permit Counsel to the Holders, any underwriter participating in any disposition pursuant to a Registration Statement, and any other attorney, accountant or other agent retained by any Holder or underwriter, to participate (including, but not limited to, reviewing, commenting on and attending all meetings) in the preparation of such Registration Statement and any Prospectus relating thereto and conduct customary due diligence in connection therewith;

(xi) in the event of the issuance or threatened issuance of any stop order suspending the effectiveness of a Registration Statement, or of any order suspending or preventing the use of any related Prospectus or suspending the qualification of any Registrable Securities included in such Registration Statement for sale in any jurisdiction, the Company shall use commercially reasonable efforts to (A) prevent the issuance of any such stop order, and in the event of such issuance, to obtain the withdrawal of such order and (B) obtain the withdrawal of any order suspending or preventing the use of any related Prospectus or Issuer Free Writing Prospectus or suspending qualification of any Registrable Securities included in such Registration Statement for sale in any jurisdiction at the earliest practicable date;

(xii) provide a CUSIP number for the Registrable Securities prior to the effective date of the first Registration Statement including Registrable Securities;

(xiii) promptly notify in writing the participating Holders, any sales or placement agent and any managing underwriters of the Registrable Securities being sold: (A) when such Registration Statement or related Prospectus or any amendment or supplement thereto has been filed, and, with respect to any such Registration Statement or any post-effective amendment, when the same has become effective; and (B) of any written comments by the Commission and by the blue sky or securities commissioner or regulator of any state with respect thereto;

(xiv) (A) prepare and file with the Commission such amendments and supplements to each Registration Statement as may be necessary to comply with the provisions of the Securities Act, including post effective amendments to each Registration Statement as may be necessary to keep such Registration Statement continuously effective for the applicable time period required hereunder and, if applicable, file any Registration Statements pursuant to Rule 462(b) promulgated under the Securities Act; (B) cause the related Prospectus to be supplemented by any required Prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 (or any similar provisions then in force) promulgated under the Securities Act; (C) comply with the provisions of the Securities Act and the Exchange Act and any applicable securities exchange or other recognized trading market with respect to the disposition of all securities covered by such Registration Statement during such period in accordance with the intended methods of disposition by the sellers thereof set forth in such Registration Statement as so amended or in such Prospectus as so supplemented; and (D) provide additional information related to each Registration Statement as requested by, and obtain any required approval necessary from, the Commission or any federal or state governmental authority;

(xv) cooperate with each Holder and each underwriter, if any, participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with FINRA;

(xvi) within the deadlines specified by the Securities Act, make all required filing fee payments in respect of any Registration Statement or Prospectus used under this Agreement (and any Public Offering covered thereby);

(xvii) if requested by any participating Holder or the managing underwriters, promptly include in a Prospectus supplement or amendment such information as the Holder or managing underwriters may reasonably request, including in order to permit the intended method of distribution of such securities, and make all required filings of such Prospectus supplement or such amendment as soon as reasonably practicable after the Company has received such request;

(xviii) in the case of legended “restricted” Registrable Securities, cooperate with the participating Holders of Registrable Securities, the managing underwriters and the transfer agent to facilitate the timely removal of such legend in connection with any transfer pursuant to a Registration Statement; and

(xix) in the case of certificated Registrable Securities, cooperate with the participating Holders of Registrable Securities and the managing underwriters to facilitate the timely preparation and delivery of certificates (not bearing any legends) representing Registrable Securities to be sold after receiving written representations from each participating Holder that the Registrable Securities represented by the certificates so delivered by such Holder will be transferred in accordance with the Registration Statement, and enable such Registrable Securities to be in such denominations and registered in such names as the Holders or managing underwriters may reasonably request at least two (2) Business Days prior to any sale of Registrable Securities; and

(xx) use commercially reasonable efforts to take all other actions deemed necessary or advisable in the reasonable judgment of the Company to effect the registration and sale of the Registrable Securities contemplated hereby.

(b) The Company shall hold in confidence and not make any disclosure of information concerning a Holder provided to the Company pursuant to this Agreement unless (i) disclosure of such information is necessary to comply with federal or state securities laws, (ii) the disclosure of such information is required to be included in a Registration Statement or necessary to avoid or correct a misstatement or omission in any Registration Statement, (iii) the release of such information is ordered pursuant to a subpoena or other final, non-appealable order from a court or governmental body of competent jurisdiction, or (iv) such information has been made generally available to the public other than by disclosure in violation of this Agreement or any other agreement. The Company agrees that to the extent permitted by law, it shall, upon learning that disclosure of such information concerning a Holder is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt written notice to such Holder and allow such Holder, at the Holder's expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.

(c) As of the date hereof and except as provided pursuant to the Plan, the Company represents and warrants that it is not a party to, or otherwise subject to, any other agreement granting registration rights to any other Person with respect to any securities of the Company, including securities convertible, exercisable or exchangeable into or for shares of any Capital Stock of the Company. The Company shall not extend registration rights that are more favorable than the provisions described herein without first offering to the Holders to amend this Agreement to provide such more favorable rights.

(d) With a view to making available certain rules and regulations of the Commission that may permit the sale of the Registrable Securities to the public without registration, on and after the Effective Date and until such date as no Holder owns any Registrable Securities, the Company agrees to:

(i) make available information necessary to comply with Section 4(a)(7) under the Securities Act and Rule 144 promulgated under the Securities Act, if available, with respect to resales of the Registrable Securities under the Securities Act, at all times, all to the extent required from time to time to enable such Holder to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by Section 4(a)(7) and Rule 144 promulgated under the Securities Act, as may be amended from time to time, or any other similar rules or regulations now existing or hereafter adopted by the Commission; and

(ii) upon the reasonable written request of any Holder, the Company will deliver to such Holder a written statement as to whether the Company has complied with such information requirements, and, if not, the specific reasons for non-compliance.

(e) The Company agrees that nothing in this Agreement shall restrict the Holders, at any time and from time to time, from selling or otherwise transferring Registrable Securities pursuant to the Resale Shelf Registration Statement, a private placement or other transaction which is not registered pursuant to the Securities Act.

(f) With respect to any Registrable Securities subject to a restrictive legend, upon request by a Holder, at any time after the restrictions described in such legend cease to be applicable, including, as applicable, when such shares may be sold under Rule 144 or in connection with a transfer pursuant to a Registration Statement, the Company will use commercially reasonable efforts to remove such restrictive legend and will obtain any necessary legal opinions at the Company's cost and expense; *provided* that the Company may reasonably request such certificates or other evidence that such restrictions no longer apply from such Holder before removing the legend.

7. Holder Undertakings.

(a) Free Writing Prospectuses. Each Holder represents that it has not prepared or had prepared on its behalf or used or referred to, and agrees that it will not prepare or have prepared on its behalf or used or refer to, any Free Writing Prospectus, and has not distributed and will not distribute any written materials in connection with the offer or sale of Registrable Securities without the prior written consent of the Company and, in connection with any underwritten Public Offering, the underwriters. Any such Free Writing Prospectus consented to by the Company and the underwriters, as the case may be, is hereinafter referred to as a "**Permitted Free Writing Prospectus**." The Company represents and agrees that it has treated and will treat, as the case may be, each Permitted Free Writing Prospectus as an Issuer Free Writing Prospectus, including in respect of timely filing with the Commission, legending and record keeping.

(b) Information for Inclusion. Each selling Holder that has requested or will request inclusion of its Registrable Securities in any Registration Statement shall furnish to the Company such information regarding such Holder and its plan and method of distribution of such Registrable Securities as the Company may, from time to time, reasonably request in writing to satisfy the form requirements of the applicable Registration Statement pursuant to the rules and regulations of the Commission. The Company may refuse to proceed with the registration of such Holder's Registrable Securities if such Holder unreasonably fails to furnish such information within a reasonable time after receiving such request.

(c) Underwritten Public Offering Participation. No Person may participate in any underwritten Public Offering hereunder unless such Person (i) agrees to sell such Person's securities on the basis provided in any underwriting arrangements in customary form entered into pursuant to this Agreement and (ii) completes and executes all questionnaires, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements; *provided* that no Holder included in any underwritten Public Offering shall be required to make any representations or warranties to the Company or the underwriters (other than representations and warranties regarding (1) such Holder's ownership of its Registrable Securities to be sold or transferred, (2) such Holder's power and authority to effect such transfer, and (3) such matters pertaining to compliance with securities laws as may be reasonably requested by the Company or the underwriters) or to undertake any indemnification obligations to the Company with respect thereto, except as otherwise provided in Section 10(b), or to the underwriters with respect thereto, except to the extent of the indemnification being given to the underwriters and their controlling Persons in Section 10(b).

(d) Price and Underwriting Discounts. In the case of an underwritten Demand Registration requested by Holders pursuant to this Agreement, the price, underwriting discount and other financial terms of the related underwriting agreement for the Registrable Securities shall be determined by the Holders beneficially owning a majority of the Registrable Securities included in such underwritten Public Offering.

(e) Notice Opt-In and Opt-Out. Notwithstanding anything to the contrary in this Agreement, until a Holder makes an affirmative written election (which may be done by checking the box on the applicable signature page hereto), the Company shall not deliver any notice or any information to such Holder that would reasonably be expected to constitute MNPI, including any applicable registration notices, or any other information under this Agreement. Upon receipt of a written election to receive such notices or information (an "**Opt-In Election**") the Company shall provide to the Holder all applicable notices or information pursuant to this Agreement from the date of such Opt-In Election. At any time following a Holder making an Opt-In Election, such Holder may also make a written election to no longer receive any such notices or information (an "**Opt-Out Election**"), which election shall cancel any previous Opt-In Election, and, following receipt of such Opt-Out Election, the Company shall not deliver any such notice or information to such Holder from the date of such Opt-Out Election. An Opt-Out Election may state a date on which it expires or, if no such date is specified, shall remain in effect indefinitely. A Holder who previously has given the Company an Opt-In Election or Opt-Out Election may revoke such election at any time, and there shall be no limit on the ability of a Holder to issue and revoke subsequent Opt-In Elections and Opt-Out Elections. Should any Holder have made an Opt-In Election and have received a notice or any information that would reasonably be expected to constitute MNPI, such Holder agrees that it shall treat such MNPI as confidential in accordance with procedures adopted by it in good faith to protect confidential information of third parties delivered to such Holder (the "**Policies**") and shall not disclose such MNPI, in each case, without the prior written consent of the Company until such time as such MNPI is or becomes available to the public generally, other than as a result of disclosure by the Holder in breach of the terms of this Agreement; *provided* that a Holder may deliver or disclose MNPI (A) to its Related Persons and its and its Related Persons' directors, officers, employees, agents, external advisors or legal counsel (collectively, "**Representatives**"), but solely to the extent such disclosure reasonably relates to its evaluation of exercise of its rights under this Agreement and the sale of any Registrable Securities in connection therewith, and such Representatives are subject to the Policies or agree to hold the MNPI confidential on terms substantially consistent with this Section 7(e); (B) when disclosure of such information is required by court or administrative order or is necessary to respond to inquiries of regulatory authorities; (C) when disclosure of such information is required by law (including any disclosure requirements pursuant to federal securities laws in connection with the filing of any Registration Statement or the use of any Prospectus referred to in this Agreement); or (D) when such information becomes available to any such Person from a source other than the Company and such source is not bound by a confidentiality agreement.

8. Registration Expenses.

(a) Expenses. All fees and expenses incurred by the Company in connection with this Agreement ("**Registration Expenses**") will be borne by the Company. These fees and expenses will include without limitation (i) stock exchange, Commission, FINRA and other registration and filing fees, (ii) all fees and expenses incurred in connection with complying with any securities or blue sky laws (including reasonable fees, charges and disbursements of counsel in connection with blue sky qualifications of the Registrable Securities), (iii) all printing, messenger and delivery expenses, (iv) the fees, charges and disbursements of counsel to the Company and of its independent public accountants and any other accounting and legal fees, charges and expenses incurred by the Company (including any expenses arising from any special audits, "comfort letters," legal opinions or negative assurance letters required in connection with or incident to any registration) and other Persons retained by the Company, (v) the fees and expenses incurred in connection with the listing of the Registrable Securities on a National Securities Exchange, (vi) any expenses of the Company's transfer agent and (vii) reasonable and customary fees and expenses of any underwriter (for an underwritten Public Offering permitted by the terms of this Agreement), but excluding discounts and commissions to the underwriters for the sale of Registrable Securities by the Holders.

(b) Reimbursement of Counsel. The Company will also reimburse or pay, as the case may be, the Holders of Registrable Securities included in such registration for the reasonable and documented fees and out-of-pocket expenses of one Counsel to the Holders relating to or in connection with any action taken pursuant to this Agreement and each additional counsel retained by any Holder for the purpose of rendering a legal opinion on behalf of such Holder in connection with any underwritten Public Offering if the managing underwriters of such Public Offering or the Company reasonably request such legal opinion and Counsel to the Holders cannot reasonably provide such legal opinion due to legal jurisdiction or otherwise. All such costs shall be paid within 30 calendar days of presentation of an invoice by such Holders.

9. Information Rights.

If the Company is not subject to the periodic reporting requirements of Section 13 or 15(d) of the Exchange Act and, pursuant to the Company's bylaws, the holders of a majority of the outstanding Common Stock have waived the requirement for the Company to be a voluntary public filer with the Commission, each Holder will be entitled to the information rights provided herein:

(a) Financial Statements. Each Holder may request from the Company:

(i) as soon as reasonably practicable, but in any event within 90 days after the end of each fiscal year of the Company (A) a balance sheet as of the end of such year, (B) statements of income and of cash flows for such year and (C) a statement of stockholders' equity as of the end of such year, all such financial statements audited and certified by independent public accountants of nationally recognized standing selected by the Company;

(ii) as soon as reasonably practicable, but in any event within forty-five (45) days after the end of each quarter of each fiscal year of the Company, unaudited statements of income and cash flows for such fiscal quarter, and an unaudited balance sheet and a statement of

stockholders' equity as of the end of such fiscal quarter, all prepared in accordance with GAAP (except that such financial statements may (A) be subject to normal year-end audit adjustments; and (B) not contain all notes thereto that may be required in accordance with GAAP); and

(iii) as soon as reasonably practicable, but in any event within forty-five (45) days after the end of each quarter of each fiscal year of the Company, a statement showing the number of shares of each class and series of capital stock and securities convertible into or exercisable for shares of capital stock outstanding at the end of the period, the Common Stock issuable upon conversion or exercise of any outstanding securities convertible or exercisable for Common Stock and the exchange ratio or exercise price applicable thereto, and the number of shares of issued stock options and stock options not yet issued but reserved for issuance, if any, all in sufficient detail as to permit a Holder to calculate their respective percentage equity ownership in the Company.

Notwithstanding anything else in this Section 9(a) to the contrary, the Company may cease providing the information set forth in this Section 9(a) during the period starting with the date thirty (30) days before the Company's good-faith estimate of the date of filing of a Registration Statement if it reasonably concludes it must do so to comply with the Commission rules applicable to such Registration Statement and related offering; *provided* that the Company's covenants under this Section 9(a) shall be reinstated at such time as the Company is no longer actively employing its commercially reasonable efforts to cause such Registration Statement to become effective.

(b) Inspection. The Company shall permit each Holder, at such Holder's expense, to visit and inspect the Company's properties; examine its books of account and records; and discuss the Company's affairs, finances, and accounts with its officers, during normal business hours of the Company as may be reasonably requested by the Holder; *provided*, *however*, that the Company shall not be obligated pursuant to this Section 9(b) to provide access to any information that it reasonably and in good faith considers to be a trade secret or confidential information (unless covered by an enforceable confidentiality agreement, in form acceptable to the Company) or the disclosure of which would adversely affect the attorney-client privilege between the Company and its counsel.

(c) Termination of Information Rights. The covenants set forth in this Section 9 shall be automatically suspended if the Company is subject to the periodic reporting requirements of Section 13 or 15(d) of the Exchange Act or otherwise files such reports as a voluntary public filer within the time periods proscribed by the rules and regulations of the Commission for a non-accelerated filer.

10. Indemnification; Contribution.

(a) Indemnification by the Company. The Company agrees to indemnify and hold harmless each Holder registered pursuant to this Agreement, such Holder's Related Persons, directors, officers, employees, members, partners, managers, agents and any Person who controls any such Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act), and any underwriter that facilitates the sale of the Registrable Securities and any Person who controls such underwriter (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) to the fullest extent permitted by applicable law, from and

against any and all losses, claims, damages, liabilities and expenses ("**Losses**") to which they or any of them may become subject insofar as such Losses arise out of or are based upon any untrue or alleged untrue statement of a material fact contained in any Registration Statement pursuant to which Registrable Securities were registered, Prospectus, preliminary prospectus, any road show, as defined in Rule 433(h)(4) under the Securities Act a ("**road show**"), or Issuer Free Writing Prospectus included in any such Registration Statement, or in any amendment thereof or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary in the case of any Prospectus, preliminary prospectus, road show or Issuer Free Writing Prospectus, in light of the circumstances under which they were made, to make the statements therein not misleading and the Company agrees to reimburse each such indemnified party for any reasonable legal or other reasonable out-of-pocket expenses incurred by them in connection with investigating or defending any such Losses (whether or not the indemnified party is a party to any proceeding); *provided*, *however*, that the Company will not be liable in any case to the extent that any such Loss arises out of or is based upon any such untrue or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to the Company by or on behalf of any such Holder specifically for inclusion therein, including, without limitation, any Holder notice and questionnaire. This indemnity agreement will be in addition to any liability which the Company may otherwise have.

(b) Indemnification by the Holders. Each Holder severally (and not jointly) agrees to indemnify and hold harmless the Company and each of its directors and directors who signed the applicable Registration Statement, and any underwriter that facilitates the sale of such Holder's Registrable Securities and any officer, director or employee of such underwriter or any Person who controls such underwriter (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act), in each case, to the fullest extent permitted by applicable law from and against any and all Losses to which they or any of them may become subject insofar as such Losses arise out of or are based upon any untrue or alleged untrue statement of a material fact contained in any Registration Statement pursuant to which Registrable Securities were registered, Prospectus, preliminary Prospectus, road show, Issuer Free Writing Prospectus included in any such Registration Statement, or in any amendment thereof or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary in the case of any Prospectus, preliminary prospectus, road show, Issuer Free Writing Prospectus, in light of the circumstances under which they were made, to make the statements therein not misleading, to the extent, but only to the extent, that any such untrue statement or alleged untrue statement or omission or alleged omission is contained in any written information furnished to the Company by or on behalf of such Holder specifically for inclusion therein; *provided*, *however*, that the maximum amount to be indemnified by such Holder pursuant to this Section 10(b) shall be limited to the net proceeds (after deducting underwriters' discounts and commissions) received by such Holder in the Public Offering to which such Registration Statement, Prospectus, preliminary prospectus, road show or Issuer Free Writing Prospectus relates; *provided*, *further*, that a Holder shall not be liable hereunder to the extent that, prior to the filing or use of any such Registration Statement, Prospectus, preliminary prospectus, road show or Issuer Free Writing Prospectus or any amendment thereof or supplement thereto, as applicable, such Holder had furnished in writing to the Company information which corrected or made not misleading any such information

previously provided to the Company. This indemnity agreement will be in addition to any liability which any such Holder may otherwise have.

(c) Conduct of Indemnification Proceedings. Promptly after receipt by an indemnified party under this Section 10 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 10, notify the indemnifying party in writing of the commencement thereof; but the failure so to notify the indemnifying party will not relieve it from liability hereunder unless and to the extent such action and such failure results in material prejudice to the indemnifying party and forfeiture by the indemnifying party of substantial rights and defenses. The indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and, except as provided in the next sentence, after notice from the indemnifying party to such indemnified party of its election to so assume the defense thereof, the indemnifying party shall not be liable to such indemnified party for any legal expenses of other counsel or any other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. Notwithstanding the indemnifying party's rights in the prior sentence, the indemnified party shall have the right to employ its own counsel (and one local counsel), and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel if:

(i) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with an actual or potential conflict of interest;

(ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party;

(iii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action; or

(iv) the indemnifying party shall authorize the indemnified party to employ separate counsel at the expense of the indemnifying party.

No indemnifying party shall, in connection with any one action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general circumstances or allegations, be liable for the fees and expenses of more than one separate firm of attorneys (in addition to any local counsel) for all indemnified parties. An indemnifying party shall not be liable under this Section 10 to any indemnified party regarding any settlement or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent is consented to by such indemnifying party, which consent shall not be unreasonably withheld. No indemnifying party, in the defense of any

such claim or litigation, shall, except with the consent of each indemnified party (which consent shall not be unreasonably withheld), consent to entry of any judgment or enter into any settlement or compromise unless such settlement or compromise (x) includes as an unconditional term thereof the giving by the claimant or plaintiff therein, to such indemnified party, of a full and final release from all liability in respect to such claim or litigation and (y) does not include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of such indemnified party.

(d) Contribution.

(i) In the event that the indemnity provided in Section 10(a) or Section 10(b) above is unavailable to or insufficient to hold harmless an indemnified party for any reason, then each applicable indemnifying party agrees to contribute to the aggregate Losses (including reasonable legal or other reasonable out-of-pocket expenses incurred in connection with investigating or defending same) to which such indemnifying party may be subject in such proportion as is appropriate to reflect the relative benefits received by the indemnifying party on the one hand and by the indemnified party on the other from the Public Offering of the Registrable Securities; *provided*, *however*, that the maximum amount of liability in respect of such contribution shall be limited in the case of any Holder to the net proceeds (after deducting underwriters' discounts and commissions) received by such Holder in connection with such registration. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law, then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the indemnifying party on the one hand and the indemnified party on the other in connection with the statements or omissions which resulted in such Losses, as well as any other relevant equitable considerations. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the indemnifying party on the one hand or the indemnified party on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(ii) The parties agree that it would not be just and equitable if contribution pursuant to this Section 10(d) were determined by *pro rata* allocation (even if the Holders of Registrable Securities or any agents or underwriters or all of them were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 10(d).

(iii) Notwithstanding the provisions of this Section 10(d), no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

(iv) For purposes of this Section 10, each Person who controls any Holder, agent or underwriter (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and each director, officer, employee and agent of any such Holder, agent or underwriter shall have the same rights to contribution as such Holder, agent or underwriter, and each Person who controls the Company (within the meaning of Section 15 of

the Securities Act or Section 20 of the Exchange Act) and each officer and director of the Company that signed the applicable Registration Statement shall have the same rights to contribution as the Company, subject in each case to the applicable terms and conditions of this Section 10(d).

(e) The provisions of this Section 10 will remain in full force and effect, regardless of any investigation made by or on behalf of any Holder or the Company or any of the officers, directors or controlling Persons referred to in this Section 10, and will survive the transfer of Registrable Securities.

11. Transfer of Registration Rights.

The rights of a Holder hereunder may be transferred, assigned, or otherwise conveyed on a *pro rata* basis in connection with any transfer, assignment, or other conveyance of Registrable Securities to any transferee or assignee, including any Related Person of such Holder; *provided* that all of the following additional conditions are satisfied with respect to any transfer, assignment or conveyance of rights hereunder: (a) such transfer, assignment or conveyance is effected in accordance with applicable securities laws; (b) such transferee or assignee agrees in writing to become subject to the terms of this Agreement by executing and delivering to the Company a Joinder; and (c) the Company is given written notice by such Holder within 15 Business Days of such transfer or assignment, stating the name and address of the transferee or assignee, identifying the Registrable Securities with respect to which such rights are being transferred or assigned and the total number of Registrable Securities and other Capital Stock of the Company beneficially owned by such transferee or assignee.

12. Amendment, Modification and Waivers; Further Assurances.

(a) Amendment. This Agreement may be amended, modified, superseded, cancelled, renewed or extended, and the terms and conditions of this Agreement may be waived, only by a written instrument, (a) signed by (i) the Company and (ii) the Majority Holders; *provided*, that no provision of this Agreement shall be modified or amended in a manner that is disproportionately and materially adverse to any Holder or that would treat any Holder less favorably than any other Holder with respect to its Registrable Securities, in each case, without the prior written consent of such Holder, or (b) in the case of a waiver, by the party hereto waiving compliance. For the avoidance of doubt, the Majority Holders may waive all rights of any Holder to participate in a Piggyback Registration so long as no Holder participates in the related Public Offering.

(b) Changes in Registrable Securities. If, and as often as, there are any changes in the Registrable Securities by way of stock split, stock dividend, combination or reclassification, or through merger, consolidation, reorganization or recapitalization, or by any other means, appropriate adjustment shall be made in the provisions hereof as may be required so that the rights and privileges granted hereby shall continue with respect to the Registrable Securities as so changed and the Company shall make appropriate provision in connection with any merger, consolidation, reorganization or recapitalization that any successor to the Company (or resulting parent thereof) shall agree, as a condition to the consummation of any such transaction, to expressly assume the Company’s obligations hereunder.

(c) Effect of Waiver. No waiver of any terms or conditions of this Agreement shall operate as a waiver of any other breach of such terms and conditions or any other term or condition, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision hereof. No written waiver hereunder, unless it by its own terms explicitly provides to the contrary, shall be construed to effect a continuing waiver of the provisions being waived and no such waiver in any instance shall constitute a waiver in any other instance or for any other purpose or impair the right of the party against whom such waiver is claimed in all other instances or for all other purposes to require full compliance with such provision. The failure of any party to enforce any provision of this Agreement shall not be construed as a waiver of such provision and shall not affect the right of such party thereafter to enforce each provision of this Agreement in accordance with its terms.

(d) Further Assurances. Each of the parties hereto shall execute all such further instruments and documents and take all such further action as any other party hereto may reasonably require in order to effectuate the terms and purposes of this Agreement.

13. Miscellaneous.

(a) Successors and Assigns. All covenants and agreements in this Agreement by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto (including any trustee in bankruptcy) whether so expressed or not. In addition, whether or not any express assignment has been made, the provisions of this Agreement which are for the benefit of purchasers or Holders of Registrable Securities are also for the benefit of, and enforceable by, any subsequent Holder. No assignment or delegation of this Agreement by the Company, or any of the Company's rights, interests or obligations hereunder, shall be effective against any Holder without the prior written consent of such Holder.

(b) Remedies; Specific Performance. Any Person having rights under any provision of this Agreement shall be entitled to enforce such rights specifically, to recover damages caused by reason of any breach of any provision of this Agreement and to exercise all other rights existing in their favor; *provided* that the liability of the Holders shall be several and not joint. The parties hereto agree and acknowledge that money damages would not be an adequate remedy for any breach of the provisions of this Agreement and that any party may in its sole discretion apply to any court of law or equity of competent jurisdiction for specific performance and/or injunctive relief (without posting any bond or other security) in order to enforce or prevent violation of the provisions of this Agreement and shall not be required to prove irreparable injury to such party or that such party does not have an adequate remedy at law with respect to any breach of this Agreement (each of which elements the parties admit). The parties hereto further agree and acknowledge that each and every obligation applicable to it contained in this Agreement shall be specifically enforceable against it and hereby waives and agrees not to assert any defenses against an action for specific performance of their respective obligations hereunder. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies available under this Agreement or otherwise. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any registration pursuant to this Agreement as the result of any controversy that might arise with respect to the interpretation or implementation of this Agreement.

(c) Notices. All notices, demands or other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given when (i) delivered personally to the recipient, (ii) e-mailed or sent by facsimile to the recipient, or (iii) one Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid). Such notices, demands and other communications shall be sent to the Company at the address set forth below and to any Holder at the address set forth on the signature page hereto (with copies sent at the address set forth below), or at such address or to the attention of such other Person as the recipient party has specified by prior written notice to the sending party.

The Company's address is:

Chesapeake Energy Corporation
6100 North Western Avenue
Oklahoma City, Oklahoma 73118
Telephone: (405) 848-8000
Attention: James R. Webb

with copies to:

Kirkland & Ellis LLP
609 Main Street
Houston, Texas 77002
Attention: Julian Seiguer, P.C.
Michael Rigdon
Facsimile: (713) 836-3600
Email: julian.seiguer@kirkland.com
michael.rigdon@kirkland.com

Copies of notices to the Holders shall be sent to:

Davis Polk & Wardwell LLP
1600 El Camino Real
Menlo Park, California 94025
Attention: Darren S. Klein
Stephen Salmon
Facsimile: (650) 752-3663
Email: darren.klein@davispolk.com
stephen.salmon@davispolk.com

If any time period for giving notice or taking action hereunder expires on a day which is a Saturday, Sunday or legal holiday in the State of New York or the jurisdiction in which the Company’s principal office is located, the time period shall automatically be extended to the Business Day immediately following such Saturday, Sunday or legal holiday.

(d) No Inconsistent Agreements. The Company shall not hereafter enter into any agreement with respect to its securities which is inconsistent with or violates the rights granted to the Holders of Registrable Securities in this Agreement.

(e) Counterparts. This Agreement may be executed in one or more counterparts, and may be delivered by means of facsimile or electronic transmission (including PDF format or any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docusign.com), email or similar transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes, each of which shall be deemed to be an original and shall be binding upon the party who executed the same, but all of such counterparts shall constitute the same agreement.

(f) Descriptive Headings; Interpretation; No Strict Construction. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a substantive part of this Agreement. Whenever required by the context, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular forms of nouns, pronouns, and verbs shall include the plural and vice versa. Reference to any agreement, document, or instrument means such agreement, document, or instrument as amended or otherwise modified from time to time in accordance with the terms thereof, and, if applicable, hereof. The words “include,” “includes” or “including” in this Agreement shall be deemed to be followed by “without limitation.” The use of the words “or,” “either” or “any” shall not be exclusive. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. All references to laws, rules, regulations and forms in this Agreement shall be deemed to be references to such laws, rules, regulations and forms, as amended from time to time or, to the extent replaced, the comparable successor thereto in effect at the time. All references to agencies, self-regulatory organizations or governmental entities in this Agreement shall be deemed to be references to the comparable successors thereto from time to time.

(g) Arm’s Length Agreement. Each of the parties to this Agreement agrees and acknowledges that this Agreement has been negotiated in good faith, at arm’s length, and not by any means prohibited by law.

(h) Sophisticated Parties; Advice of Counsel. Each of the parties to this Agreement specifically acknowledges that (i) it is a knowledgeable, informed, sophisticated Person capable of understanding and evaluating the provisions set forth in this Agreement and (ii) it has been fully advised and represented by legal counsel of its own independent selection and has relied wholly upon its independent judgment and the advice of such counsel in negotiating and entering into this Agreement.

(i) Governing Law. This agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflicts of laws rules of such state.

(j) Submission to Jurisdiction. The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in the United States District Court for the Southern District of New York or any New York State court sitting in New York City, so long as one of such courts shall have subject matter jurisdiction over such suit, action or proceeding, and that any case of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of New York, and each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 13(c) shall be deemed effective service of process on such party.

(k) Waiver of Jury Trial. Each of the parties to this Agreement hereby agrees to waive its respective rights to a jury trial of any claim or cause of action based upon or arising out of this Agreement. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this Agreement, including contract claims, tort claims and all other common law and statutory claims. Each party hereto acknowledges that this waiver is a material inducement to enter into this Agreement, that each has already relied on this waiver in entering into this Agreement and that each will continue to rely on this waiver in their related future dealings. Each party hereto further warrants and represents that it has reviewed this waiver with its legal counsel and that it knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 13(k) AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

(l) Complete Agreement. This Agreement and any certificates, documents, instruments and writings that are delivered pursuant hereto, represent the complete agreement among the parties hereto as to all matters covered hereby, and supersedes any prior agreements or understandings among the parties.

(m) Severability. In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

(n) Termination. This Agreement shall terminate and be of no further force or effect when there shall no longer be any Registrable Securities outstanding; *provided* that (i) any Holder may elect to terminate its obligations under this Agreement by giving the Company written notice thereof and (ii) this Agreement shall automatically terminate with respect to a Holder that no longer holds any Registrable Securities; *provided further* that the provisions of Sections 6(b), 7(e), 8, 10 and 13 shall survive any termination pursuant to this Section 13(n).

(o) Independent Agreement by the Holders. Notwithstanding anything to the contrary herein, the duties and obligations of each Holder shall be several, and not joint. No Holder shall have any fiduciary duty, any duty of trust or confidence in any form, or other duties or responsibilities in any kind or form to each other, any other Holder, the Company or any of the Company's employees, directors or stockholders or other stakeholders. There are no commitments among or between the Holder as a result of this Agreement or the transactions contemplated herein except as expressly set forth in this Agreement. Nothing contained in this Agreement, and no action taken by any Holder pursuant hereto is intended to constitute any such Holders as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that any Holder is in any way acting in concert or as a member of a "group" with any other Holder within the meaning of Section 13(d)(3) or Rule 13d-5 under the Exchange Act or otherwise. This Agreement does not constitute an agreement, arrangement or understanding with respect to acting together for the purpose of acquiring, holding, voting or disposing of any securities of the Company or any other Person. For the avoidance of doubt, each Holder is entering into this Agreement directly with the Company and not with any other Holder, and no other Holder shall have any right to bring any action against any other Holder with respect to this Agreement (or any breach thereof). All rights under this Agreement are separately granted to each Holder by the Company and *vice versa*, and the use of a single document is solely for the convenience of the Holders. The decision to commit to enter into the transactions contemplated by this Agreement has been made independently by each Holder. Nothing in this Agreement shall require any Holder to incur any expenses, liabilities or other obligations, or agreement to any commitments, undertakings, concessions, indemnities or other arrangements that could result in expenses or other obligations to any other Holder.

[*Signature Pages Follow*]

IN WITNESS WHEREOF, the parties hereto have executed this Registration Rights Agreement as of the date first written above.

CHESAPEAKE ENERGY CORPORATION

By: /s/ James R. Webb

Name: James R. Webb

Title: Executive Vice President – General Counsel and Corporate Secretary

[*Signature Page to Registration Rights Agreement*]

IN WITNESS WHEREOF, the parties hereto have executed this Registration Rights Agreement as of the date first written above.

HOLDERS

[Holder's signature pages on file with the company]

ANNEX A

Form of Joinder Agreement

THIS JOINDER AGREEMENT is made and entered into by the undersigned with reference to the following facts:

Reference is made to the Registration Rights Agreement, dated as of February 9, 2021, as amended (the "**Registration Rights Agreement**"), by and among Chesapeake Energy Corporation (the "**Company**"), the other parties (the "**Holders**") thereto. Capitalized terms used but not defined in this Joinder Agreement shall have the meanings ascribed thereto in the Registration Rights Agreement.

As a condition to the acquisition of rights under the Registration Rights Agreement in accordance with the terms thereof, the undersigned agrees as follows:

1. The undersigned hereby agrees to be bound by the provisions of the Registration Rights Agreement and undertakes to perform each obligation as if a Holder thereunder and an original signatory thereto in such capacity.

2. This Joinder Agreement shall bind, and inure to the benefit of, the undersigned hereto and its respective devisees, heirs, personal and legal representatives, executors, administrators, successors and assigns.

3. This Joinder Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Delaware or any other jurisdiction) to the extent such rules or provisions would cause the application of the laws of any jurisdiction other than the State of Delaware.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement.

[**HOLDER**]

By: _____

Name:

Title:

Date: _____

Address: _____

_____

_____

_____

Phone Number: _____

Facsimile Number: _____

E-mail for Notice: _____

I.R.S. I.D. Number: _____

Amount of Registrable Securities Acquired: _____

To exercise the Opt-In Election pursuant to Section 7(e), please check the box below:

[ ] – The undersigned Holder hereby notifies the Company of its exercise of the Opt-In Election.

Exhibit 10.3

WARRANT AGREEMENT

dated as of February 9, 2021 between

CHESAPEAKE ENERGY CORPORATION

and

EQUINITI TRUST COMPANY

as Warrant Agent

Class A Warrants to Purchase Common Shares

TABLE OF CONTENTS

WARRANT AGREEMENT

Warrant Agreement (as it may be amended from time to time, this "**Warrant Agreement**"), dated as of February 9, 2021, between Chesapeake Energy Corporation, an Oklahoma corporation (the "**Company**"), and Equiniti Trust Company, as warrant agent (the "**Warrant Agent**").

WHEREAS, pursuant to the Joint Plan of Reorganization (the "**Plan**") of the Company and certain of its debtor affiliates under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**") approved by the United States Bankruptcy Court for the Southern District of Texas, Houston Division, certain warrants (the "**Warrants**") to purchase Common Shares (as defined herein) of the Company shall be issued;

WHEREAS, the Warrants and the Common Shares underlying the Warrants have been offered and sold in reliance on the exemption from the registration requirements of the Securities Act and any applicable state securities or "blue sky" laws afforded by Section 1145(a) of the Bankruptcy Code; and

WHEREAS, the Company desires that the Warrant Agent act on behalf of the Company and the Warrant Agent is willing to act, in connection with the issuance, exchange, Transfer (as defined below), substitution and exercise of Warrants.

NOW THEREFORE in consideration of the mutual agreements herein contained, the Company and the Warrant Agent agree as follows.

ARTICLE 1

DEFINITIONS

Section 1.1 Certain Definitions.

"**Affiliate**" shall mean, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such first specified Person. For the purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"**Agent Members**" has the meaning set forth in Section 2.4(b) hereof.

"**Alternative Securities Exchange**" means, excluding any National Securities Exchange, any other securities exchange or over-the-counter quotation system, including, without limitation, the NYSE MKT, the Nasdaq Capital Market, any quotation or other listing service provided by the OTC Markets Group or the Financial Industry Regulatory Authority, Inc., any "pink sheet" or other alternative listing service or any successor or substantially equivalent service to any of the foregoing.

"**Applicable Procedures**" means, with respect to any Transfer or exchange of, or exercise of any Warrants evidenced by, any Global Warrant Certificate, the rules and procedures of the Depositary that apply to such Transfer, exchange or exercise.

"**Authentication Order**" means a Company Order for authentication and delivery of Warrants.

"**Authorized Share Failure**" has the meaning set forth in Section 3.10 hereof.

"**Bankruptcy Code**" has the meaning set forth in the Recitals.

"**Beneficial Owner**" means any Person beneficially owning an interest in a Global Warrant, which interest is credited to the account of a direct participant in the Depository for the benefit of such Person through the book-entry system maintained by the Depository (or its agent). For the avoidance of doubt, any direct participant of the Depository may also be a Beneficial Owner.

"**Board**" means the board of directors of the Company from and after the Plan Effective Date.

"**Business Day**" means any day other than a Saturday, a Sunday, a day which is a legal holiday in the State of New York, or a day on which banking institutions and trust companies in the State of New York are authorized or obligated by Law, regulation or executive order to close.

"**Cash Settlement**" means the settlement method pursuant to which an Exercising Owner shall be entitled to receive from the Company, for each Warrant exercised, a number of fully paid and nonassessable Common Shares equal to the Cash Settlement Share Amount in exchange for payment in cash by the Exercising Owner of the applicable Exercise Price for each such Common Share so receivable upon exercise of such Warrant.

"**Cash Settlement Share Amount**" means, for each Warrant exercised as to which Cash Settlement is applicable, one fully paid and nonassessable Common Share, subject to adjustment in accordance with Article 4.

"**Cashless Settlement**" means the settlement method pursuant to which an Exercising Owner shall be entitled to receive from the Company, for each Warrant exercised, a number of Common Shares equal to the Cashless Settlement Share Amount without any payment of cash therefor.

"**Cashless Settlement Share Amount**" means for each Warrant exercised as to which an exercising owner elects Cashless Settlement, one fully paid and nonassessable Common Share, subject to adjustment in accordance with Article 4, *multiplied* by a fraction equal to (i) the Fair Market Value (as of the Exercise Date for such Warrant) of one Common Share minus the Exercise Price therefor *divided* by (ii) such Fair Market Value. The number of Common Shares issuable upon exercise, on the same Exercise Date, of Warrants as to which Cashless Settlement is applicable shall be aggregated for each Warrantholder, together with cash in lieu of any fractional Common Share, as provided in Section 3.6. In no event shall the Company deliver a fractional Common Share in connection with an exercise of Warrants as to which Cashless Settlement is applicable.

"**Class A Warrants**" has the meaning set forth in Section 2.1(a).

"**Close of Business**" means 5:00 p.m., New York City time.

"**Closing Date**" means the Plan Effective Date.

"**Common Shares**" means shares of the common stock, par value $0.01 per share, of the Company issued on or after the Plan Effective Date.

"**Company**" has the meaning set forth in the Preamble.

"**Company Order**" means a written request or order signed in the name of the Company by any two officers, at least one of whom must be its Chief Executive Officer, Chief Financial Officer, its Treasurer, any Assistant Treasurer, its Secretary or any Assistant Secretary, and delivered to the Warrant Agent.

"**Convertible Security**" means any Specified Convertible Security issued by the Company that is convertible into, or exercisable or exchangeable for, directly or indirectly, Common Shares.

"**Corporate Agency Office**" has the meaning set forth in Section 2.5(a) hereof.

"**Countersigning Agent**" means any Person authorized by the Warrant Agent to act on behalf of the Warrant Agent to countersign Warrant Certificates.

"**Definitive Warrant Certificate**" means a Warrant Certificate registered in the name of the Warrantholder thereof that does not bear the Global Warrant Legend and that does not have a "Schedule of Decreases of Warrants" attached thereto.

"**Depositary**" means DTC and its successors as depositary hereunder.

"**DTC**" means The Depository Trust Company.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended from time to time, and the related rules and regulations promulgated thereunder.

"**Exempt Transaction**" shall mean a merger, reorganization or consolidation that results in the voting securities of the Company outstanding immediately prior thereto continuing to represent immediately following such merger, reorganization or consolidation (either by remaining outstanding or by being converted into voting securities of the surviving entity or the ultimate parent company of such surviving entity) more than 50% of the combined voting power of the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation (or the ultimate parent company of the Company or such surviving entity).

"**Exercise Date**" has the meaning set forth in Section 3.2(d).

"**Exercise Notice**" means, for any Warrant, an exercise notice substantially in the form set forth in Exhibit B hereto.

"**Exercising Owner**" means any Warrantholder that exercises Warrants pursuant to the terms hereof.

"**Exercise Price**" means $27.63, subject to adjustment as provided in Article 4.

"**Expiration Time**" means the earlier of (i) the Close of Business on February 9, 2026 and (ii) the date of consummation of any Liquidity Event.

"**Fair Market Value,**" as of a specified date, means the price per Common Share or per unit of other Securities or other distributed property determined as follows:

(i) in the case of Common Shares or other Securities listed on a National Securities Exchange, the VWAP of a Common Share or a single unit of such other Security for the 10 Trading Days immediately preceding the specified date (or if the Common Shares or other Securities have been listed for less than 10 Trading Days, the VWAP for such lesser period of time);

(ii) in the case of Common Shares or other Securities listed on an Alternative Securities Exchange, the VWAP of a Common Share or a single unit of such other Security in composite trading for the principal U.S. national or regional securities exchange on which such Securities are then listed for the 10 Trading Days immediately preceding the specified date (or if the Common Shares or other Securities have been listed for less than 10 Trading Days, the VWAP for such lesser period of time);

(iii) in the case of Common Shares or other Securities that are publicly traded but are not listed on a National Securities Exchange or an Alternative Securities Exchange, the average of the reported bid and ask prices of a Common Share or a single unit of such other Security in the over-the-counter market on which such Securities are then traded for the 10 Trading Days immediately preceding the specified date (or if the Common Shares or other Securities have been publicly traded (but not listed) for less than 10 Trading Days, the average of the reported bid and ask prices for such lesser period of time); or

(iv) in all other cases, the Fair Market Value per Common Share or per unit of other Securities or other distributed property as of a date not earlier than 20 Business Days preceding the specified date as reasonably determined in good faith by the Board.

For the avoidance of doubt, no third party appraisal shall be required in connection with any Warrant that is exercised using Cashless Settlement.

"**Fundamental Equity Change**" has the meaning set forth in Section 4.5(a) hereof.

"**Funds**" has the meaning set forth in Section 3.2(f) hereof.

"**Funds Account**" has the meaning set forth in Section 3.2(f) hereof.

"**Global Warrant Certificate**" means a Warrant Certificate deposited with or on behalf of and registered in the name of the Depositary or its nominee, that bears the Global Warrant Legend and that has the "Schedule of Decreases of Warrants" attached thereto.

"**Global Warrant Legend**" means the legend set forth in Section 2.4(a).

"**Law**" means any federal, state, local, foreign or provincial law, statute, ordinance, rule, regulation, judgment, order, injunction, decree or agency requirement having the force of law or any undertaking to or agreement with any governmental authority, including common law.

"**Liquidity Event**" means any transaction or series of related transactions that results in (a) a merger, consolidation or combination involving the Company, (b) the sale or exchange of all or substantially all of the equity interests of the Company to one or more third parties (whether by merger, sale, recapitalization, consolidation, combination or otherwise) or (c) the sale, directly or indirectly, by the Company of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole; provided that, in each case, the closing or other consummation of such Liquidity Event occurs on or prior to February 9, 2026; provided further, however that notwithstanding the foregoing, no Exempt Transaction shall be a Liquidity Event.

"**Management Incentive Plan**" has the meaning set forth in the Plan.

"**National Securities Exchange**" means The New York Stock Exchange, The Nasdaq Global Select Market or The Nasdaq Global Market.

"**Person**" means an individual, partnership, firm, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

"**Plan**" has the meaning set forth in the Recitals.

"**Plan Effective Date**" means the effective date of the Plan as defined therein.

"**Recipient**" has the meaning set forth in Section 3.2(c) hereof.

"**Record Date**" means (i) with respect to any dividend, distribution, recapitalization, reclassification, split, reverse split, reorganization, consolidation, merger or other transaction or event in which the holders of Common Shares have the right to receive any cash, Securities or other property or in which Common Shares (or another applicable Security) are exchanged for or converted into, any combination of, cash, Securities or other property, the date fixed for determination of holders of Common Shares entitled to receive such cash, Securities or other property or participate in such exchange or conversion (whether such date is fixed by the Board or by statute, contract or otherwise) or (ii) with respect to any redemption or repurchase of Common Shares or Convertible Securities by the Company, the date on which the Company agrees to such redemption or repurchase (if such date precedes the date on which the Company effects such redemption or repurchase).

"**Reference Property**" has the meaning set forth in Section 4.6(a) hereof.

"**Reorganization Event**" has the meaning set forth in Section 4.6(a) hereof.

"**Required Warrantholders**" means Warrantholders holding at least 50.01% of the then-outstanding Warrants.

"**Securities**" means (i) any capital stock (whether common or preferred, voting or nonvoting), partnership, membership or limited liability company interest or other equity or voting interest, (ii) any right, option, warrant (including the Warrants) or other security or evidence of indebtedness convertible into, or exercisable or exchangeable for, directly or indirectly, any interest described in clause (i) (each, a "Specified Convertible Security"), (iii) any notes, bonds, debentures, trust receipts and other obligations, instruments or evidences of indebtedness, and (iv) any other "securities," as such term is defined or determined under the Securities Act.

"**Securities Act**" means the Securities Act of 1933, as amended from time to time, and the related rules and regulations promulgated thereunder.

"**Settlement Date**" means, in respect of a Warrant that is exercised hereunder, (a) in all circumstances other than a Cashless Settlement where Fair Market Value has been determined by the Board pursuant to clause (vi) of the definition thereof, the third Business Day immediately following the Exercise Date for such Warrant, and (b) in the event of a Cashless Settlement where Fair Market Value has been determined by the Board pursuant to clause (iv) of the definition thereof, the third Business Day immediately following receipt by the Exercising Owner of notice of such Fair Market Value.

"**Specified Convertible Security**" has the meaning set forth in the definition of Securities.

"**Subsidiary**" means, as to any Person, any corporation, partnership, limited liability company or other organization, whether incorporated or unincorporated, of which at least a majority of the Securities or other interests having by their terms voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly beneficially owned or controlled by such party or by any one or more of its subsidiaries, or by such party and one or more of its subsidiaries.

"**Trading Day**" means each Monday, Tuesday, Wednesday, Thursday and Friday, other than any day on which Securities are not traded on the applicable securities exchange.

"**Transfer**" means, with respect to any Warrant, to directly or indirectly (whether by act, omission or operation of Law), sell, exchange, transfer, hypothecate, negotiate, gift, convey in trust, pledge, assign, encumber, or otherwise dispose of, or by adjudication of a Person as bankrupt, by assignment for the benefit of creditors, by attachment, levy or other seizure by any creditor (whether or not pursuant to judicial process), or by passage or distribution of Warrants under judicial order or legal process, carry out or permit the transfer or other disposition of, all of such Warrant.

"**Unit of Reference Property**" has the meaning set forth in Section 4.6(a) hereof.

"**VWAP**" means, for any Trading Day, the price for Securities (including Common Shares) determined by the daily volume-weighted average price per unit of such Securities for such Trading Day on the trading market on which such Securities are then listed or quoted, in each case, for the regular trading session (including any extensions thereof, without regard to pre-open or after hours trading outside of such regular trading session) as reported on a National Securities Exchange, or if such Securities are listed or quoted on an Alternative Securities Exchange, as reported by the Alternative Securities Exchange on which such Securities are then listed or quoted, whichever is applicable, as published by Bloomberg at 4:15 p.m., New York City time (or 15 minutes following the end of any extension of the regular trading session), on such Trading Day.

"**Warrant**" or "**Warrants**" means those certain warrants of the Company to purchase the Warrant Shares and which expire at the Expiration Time and are issued pursuant to this Warrant Agreement with the terms, conditions and rights set forth therein. Each Warrant shall entitle the Warrantholder of the Warrant or the Warrant Certificate evidencing such Warrant upon exercise to purchase one Common Share at the Exercise Price, subject to adjustment pursuant to Article 4, issued hereunder.

"**Warrant Agent**" has the meaning set forth in the Preamble.

"**Warrant Agreement**" has the meaning set forth in the Preamble.

"**Warrant Certificates**" means those certain warrant certificates evidencing the Warrants, substantially in the form of Exhibit A attached hereto, except that, in the case of a Definitive Warrant Certificate, such Warrant Certificate shall not bear the Global Warrant Legend and shall not have a "Schedule of Decreases of Warrants" attached thereto.

"**Warrant Register**" has the meaning set forth in Section 2.5(b).

"**Warrant Shares**" means each Common Share issuable upon the exercise of the Warrants.

"**Warrantholder**" means any Person in whose name at the time any Warrant or Warrant Certificate is registered upon the Warrant Register and, when used with respect to any Warrant Certificate, the Person in whose name such Warrant Certificate is registered in the Warrant Register.

ARTICLE 2

WARRANT CERTIFICATES

Section 2.1 Original Issuance of Warrants.

(a) On the Closing Date, one or more Global Warrant Certificates evidencing the Warrants equal to 11,111,111 Class A Warrants (the "**Class A Warrants**"), (each such Warrant to be subject to adjustment from time to time as described herein), in accordance with the terms of this Warrant Agreement and the Plan, shall be executed by the Company and delivered to the Warrant Agent for countersignature, along with an Authentication Order, and the Warrant Agent shall countersign and deliver such Global Warrant Certificates for issuance to the Depositary, or its custodian, for crediting to the

accounts of its participants for the benefit of the Warrantholders, as the Beneficial Owners of the Warrants, pursuant to the Applicable Procedures of the Depositary on the Closing Date. Each Warrant Certificate shall evidence the number of Warrants specified therein, and each Warrant evidenced thereby shall represent the right, subject to the provisions contained herein and therein, to purchase one Common Share, subject to adjustment as provided in Article 4.

(b) Each Warrant shall be exercisable for one fully paid and nonassessable Common Share (subject to adjustment under Article 4) upon payment of the applicable Exercise Price for each such Common Share so receivable upon exercise of such Warrant and compliance with the procedures set forth in this Warrant Agreement. On the Closing Date, the Warrant Agent shall register all of the Warrants in the Warrant Register. The Warrants shall be dated as of the Closing Date and, subject to the terms hereof, shall be the only Warrants issued or outstanding under this Warrant Agreement as of the Closing Date.

(c) All Warrants issued under this Warrant Agreement shall in all respects be equally and ratably entitled to their respective benefits under this Warrant Agreement, without preference, priority, or distinction on account of the actual time of the issuance and authentication or any other terms thereof. Each Warrant shall be, and shall remain, subject to the provisions of this Warrant Agreement until such time as such Warrant shall have been duly exercised or shall have expired or been canceled in accordance with the terms hereof. Each Warrantholder shall be bound by all of the terms and provisions of this Warrant Agreement as fully and effectively as if such Warrantholder had signed the same.

Section 2.2 Form of Warrants. The Warrant Certificates evidencing the Warrants shall be in registered form only and substantially in the form attached hereto as Exhibit A, shall be dated the date on which countersigned by the Warrant Agent, shall have such insertions as are appropriate or required or permitted by this Warrant Agreement and may have such letters, numbers or other marks of identification and such legends and endorsements typed, stamped, printed, lithographed or engraved thereon as the officers of the Company executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Warrant Agreement, or as may be required to comply with any Law or with any rule or regulation pursuant thereto or with any rule or regulation of any securities exchange on which the Warrants may be listed, or to conform to usage.

Section 2.3 Execution and Delivery of Warrant Certificates.

(a) Warrant Certificates evidencing the Warrants which may be countersigned and delivered under this Warrant Agreement are limited to Warrant Certificates evidencing the Warrants except for Warrant Certificates countersigned and delivered upon registration of Transfer of, or in exchange for, or in lieu of, one or more previously countersigned Warrant Certificates pursuant to Section 2.4, Section 2.5, Section 2.8, and Section 3.2(b).

(b) The Warrant Agent is hereby authorized to countersign and deliver Warrant Certificates as required by Section 2.1, Section 2.4, Section 2.5, Section 2.8, and Section 3.2(b).

(c) The Warrant Certificates shall be executed in the corporate name and on behalf of the Company by the Chief Executive Officer or the Chief Financial Officer of the Company under corporate seal reproduced thereon and attested to by the Secretary or one of the Assistant Secretaries of the Company, either manually or by facsimile signature printed thereon. The Warrant Certificates shall be manually countersigned by the Warrant Agent and shall not be valid for any purpose unless so countersigned. In case any officer of the Company whose signature shall have been placed upon any of the Warrant Certificates shall cease to be such officer of the Company before countersignature by the Warrant Agent and issue and delivery thereof, such Warrant Certificates may, nevertheless, be countersigned by the Warrant Agent and issued and delivered with the same force and effect as though such person had not ceased to be such officer of the Company, and any Warrant Certificate may be signed on behalf of the Company by such person as, at the actual date of the execution of such Warrant Certificate, shall be a proper officer of the Company, although at the date of the execution of this Warrant Agreement any such person was not such officer.

Section 2.4 Global Warrant Certificates.

(a) Any Global Warrant Certificate shall bear the legend substantially in the form set forth in Exhibit A hereto (the "**Global Warrant Legend**").

(b) So long as a Global Warrant Certificate is registered in the name of the Depositary or its nominee, members of, or participants in, the Depositary ("**Agent Members**") shall have no rights under this Warrant Agreement with respect to the Warrants evidenced by such Global Warrant Certificate held on their behalf by the Depositary or its custodian, and the Depositary may be treated by the Company, the Warrant Agent and any agent of the Company or the Warrant Agent as the absolute owner of such Warrants, and as the sole Warrantholder of such Warrant Certificate, for all purposes. Accordingly, any such Agent Member's beneficial interest in such Warrants will be shown only on, and the Transfer of such interest shall be effected only through, records maintained by the Depositary or its nominee or its Agent Members, and neither the Company nor the Warrant Agent shall have any responsibility or liability with respect to such records maintained by the Depositary or its nominee or its Agent Members. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Warrant Agent or any agent of the Company or the Warrant Agent from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and its Agent Members, the operation of customary practices governing the exercise of the rights of a holder of any security.

(c) Any Beneficial Owner of Warrants evidenced by a Global Warrant Certificate registered in the name of the Depositary or its nominee shall, by acceptance of such beneficial interest, agree that Transfers of beneficial interests in the Warrants evidenced by such Global Warrant Certificate may be effected only through the book-entry system maintained by the Depositary as the Warrantholder of such Global Warrant

Certificate (or its agent), and that ownership of a beneficial interest in Warrants evidenced thereby shall be reflected solely in such book-entry form.

(d) Transfers of a Global Warrant Certificate registered in the name of the Depositary or its nominee shall be limited to Transfers in whole, and not in part, to the Depositary, its successors, and their respective nominees except as set forth in Section 2.4(e). Interests of Beneficial Owners in a Global Warrant Certificate registered in the name of the Depositary or its nominee shall be Transferred in accordance with the Applicable Procedures of the Depositary.

(e) A Global Warrant Certificate registered in the name of the Depositary or its nominee shall be exchanged for Definitive Warrant Certificates only if the Depositary (i) has notified the Company that it is unwilling or unable to continue as or ceases to be a clearing agency registered under Section 17A of the Exchange Act and (ii) a successor to the Depositary registered as a clearing agency under Section 17A of the Exchange Act is not able to be appointed by the Company within 90 days or the Depositary is at any time unwilling or unable to continue as Depositary and a successor to the Depositary is not able to be appointed by the Company within 90 days. In any such event, a Global Warrant Certificate registered in the name of the Depositary or its nominee shall be surrendered to the Warrant Agent for cancellation in accordance with Section 3.12, and the Company shall execute, and the Warrant Agent shall countersign and deliver, to each Beneficial Owner identified by the Depositary, in exchange for such Beneficial Owner's beneficial interest in such Global Warrant Certificate, Definitive Warrant Certificates evidencing, in the aggregate, the number of Warrants theretofore represented by such Global Warrant Certificate with respect to such Beneficial Owner's respective beneficial interest. Any Definitive Warrant Certificate delivered in exchange for an interest in a Global Warrant Certificate pursuant to this Section 2.4(e) shall not bear the Global Warrant Legend. Interests in any Global Warrant Certificate may not be exchanged for Definitive Warrant Certificates other than as provided in this Section 2.4(e).

(f) The Warrantholder of a Global Warrant Certificate registered in the name of the Depositary or its nominee may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Warrantholder of a Warrant Certificate is entitled to take under this Warrant Agreement or such Global Warrant Certificate.

(g) Each Global Warrant Certificate will evidence such of the outstanding Warrants as will be specified therein and each shall provide that it evidences the aggregate number of outstanding Warrants from time to time endorsed thereon and that the aggregate number of outstanding Warrants evidenced thereby may from time to time be reduced, to reflect exercises or expirations. Any endorsement of a Global Warrant Certificate to reflect the amount of any decrease in the aggregate number of outstanding Warrants evidenced thereby will be made by the Warrant Agent (i) in the case of an exercise, in accordance with the Applicable Procedures as required by Section 3.2(b) or (ii) in the case of an expiration, in accordance with Section 2.6.

(h) The Company initially appoints DTC to act as Depositary with respect to the Global Warrant Certificates.

(i) Every Warrant Certificate authenticated and delivered in exchange for, or in lieu of, a Global Warrant Certificate or any portion thereof, pursuant to this Section 2.4, Section 2.5(a), or Section 2.8, shall be authenticated and delivered in the form of, and shall be, a Global Warrant Certificate, and a Global Warrant Certificate may not be exchanged for a Definitive Warrant Certificate, in each case, other than as provided in Section 2.4(e). Whenever any provision herein refers to issuance by the Company and countersignature and delivery by the Warrant Agent of a new Warrant Certificate in exchange for the portion of a surrendered Warrant Certificate that has not been exercised, in lieu of the surrender of any Global Warrant Certificate and the issuance, countersignature and delivery of a new Global Warrant Certificate in exchange therefor, the Warrant Agent may endorse such Global Warrant Certificate to reflect a reduction in the number of Warrants evidenced thereby in the amount of Warrants so evidenced that have been so exercised.

(j) Beneficial interests in any Global Warrant Certificate may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Global Warrant Certificate in accordance with the Applicable Procedures.

(k) At such time as all Warrants evidenced by a particular Global Warrant Certificate have been exercised or expired in whole and not in part, such Global Warrant Certificate shall, if not in custody of the Warrant Agent, be surrendered to or retained by the Warrant Agent for cancellation in accordance with Section 3.12.

Section 2.5 Registration, Transfer, Exchange and Substitution.

(a) The Warrant Agent will maintain an office (the "**Corporate Agency Office**") in the United States of America, where Warrant Certificates may be surrendered for registration of Transfer or exchange and where Warrant Certificates may be surrendered for exercise of Warrants evidenced thereby, which office is EQ Shareowner Services, P.O. Box 64874, St. Paul, MN 55164 on the Closing Date. The Warrant Agent will give prompt written notice to all Warrantholders of any change in the location of such office.

(b) The Warrant Certificates evidencing the Warrants shall be issued in registered form only. The Company shall cause to be kept at the office of the Warrant Agent designated for such purpose a warrant register (the "**Warrant Register**") in which, subject to such reasonable regulations as the Warrant Agent may prescribe and such regulations as may be prescribed by Law, the Company shall provide for the registration of Warrant Certificates and of Transfers or exchanges of Warrant Certificates as herein provided.

(c) Upon surrender for registration of Transfer of any Warrant Certificate at the Corporate Agency Office, the Company shall execute, and the Warrant Agent shall countersign and deliver, in the name of the designated Transferee or Transferees, one or more new Warrant Certificates evidencing a like aggregate number of Warrants.

(d) At the option of the Warrantholder, Warrant Certificates may be exchanged at the office of the Warrant Agent upon payment of the charges hereinafter provided for other Warrant Certificates evidencing a like aggregate number of Warrants. Whenever any Warrant Certificates are so surrendered for exchange, the Company shall

execute, and the Warrant Agent shall countersign and deliver, the Warrant Certificates of the same tenor and evidencing the same number of Warrants as evidenced by the Warrant Certificates surrendered by the Warrantholder making the exchange.

(e) All Warrant Certificates issued upon any registration of Transfer or exchange of, or in lieu of, Warrant Certificates shall be the valid obligations of the Company, evidencing the same obligations, and entitled to the same benefits under this Warrant Agreement, as the Warrant Certificates surrendered for such registration of Transfer or exchange or substitution.

(f) Every Warrant Certificate surrendered for registration of Transfer or exchange shall (if so required by the Company or the Warrant Agent) be duly endorsed, or be accompanied by a written instrument of Transfer in form satisfactory to the Company and the Warrant Agent, duly executed by the Warrantholder thereof or his attorney duly authorized in writing.

(g) No service charge shall be made for any registration of Transfer or exchange of Warrant Certificates; provided, however, to the extent provided in the proviso to Section 3.11, the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of Transfer or exchange of Warrant Certificates.

(h) The Warrant Agent shall, upon request of the Company from time to time, deliver to the Company such reports of registered ownership of the Warrants and such records of transactions with respect to the Warrants and the Common Shares as the Company may request. The Warrant Agent shall also make available to the Company for inspection by the Company's agents or employees, from time to time as the Company may request, such original books of accounts and records maintained by the Warrant Agent in connection with the issuance and exercise of Warrants hereunder, such inspections to occur at the Corporate Agency Office during normal business hours.

(i) The Warrant Agent shall keep copies of this Warrant Agreement and any notices given to Warrantholders hereunder available for inspection by the Warrantholders during normal business hours at the Corporate Agency Office. The Company shall supply the Warrant Agent from time to time with such numbers of copies of this Warrant Agreement as the Warrant Agency may request.

(j) Transfers of the Warrant Certificates evidencing Warrants shall be subject only to the terms of this Warrant Agreement and applicable securities Laws. The Warrant Agent shall register the Transfer, from time to time, of any outstanding Warrant Certificates evidencing Warrants upon the Warrant Register, upon delivery of a duly executed assignment, in the form attached hereto as Exhibit A, and accompanied by appropriate instructions for Transfer. No such Transfer shall be effected until, and the Transferee shall succeed to the rights of the holder thereof only upon, final acceptance and registration of the Transfer in the Warrant Register by the Warrant Agent. Prior to the registration of any Transfer of a Warrant Certificate evidencing a Warrant as provided herein, the Company, the Warrant Agent, and any agent of the Company or the Warrant Agent may treat the Person in whose name such Warrant Certificate is registered as the owner thereof and of the Warrants evidenced thereby for all purposes, notwithstanding

any notice to the contrary. Subject to Section 3.11, no service charge, tax or governmental payment shall be required of any Transferor or Transferee in connection with any such Transfer or registration of Transfer. A party requesting Transfer of a Warrant Certificate evidencing a Warrant must provide reasonable and customary evidence of authority if requested by the Warrant Agent.

Section 2.6 Cancellation of the Warrants. Any Warrants outstanding as of the Expiration Time shall be automatically cancelled without any further action on the part of the Warrant Agent or any other Person.

Section 2.7 CUSIP Numbers. In issuing the Warrants, the Company will use a "CUSIP" number. The Warrant Agent will use CUSIP numbers in notices to Warrantholders. The Company will promptly notify the Warrant Agent in writing of any change in the CUSIP numbers.

Section 2.8 Loss or Mutilation.

(a) If (i) any mutilated Warrant Certificate is surrendered to the Warrant Agent or (ii) both (A) there shall be delivered to the Company and the Warrant Agent (x) a claim by a Warrantholder as to the destruction, loss or wrongful taking of any Warrant Certificate of such Warrantholder and a request thereby for a new replacement Warrant Certificate, and (y) such indemnity bond as may be required by them to save each of them and any agent of either of them harmless and (B) such other reasonable requirements as may be imposed by the Company as permitted by Section 8-405 of the Uniform Commercial Code have been satisfied, then, in the absence of notice to the Company or the Warrant Agent that such Warrant Certificate has been acquired by a "protected purchaser" within the meaning of Section 8-405 of the Uniform Commercial Code, the Company shall execute and upon its written request the Warrant Agent shall countersign and deliver to the registered Warrantholder of the lost, wrongfully taken, destroyed or mutilated Warrant Certificate, in exchange therefore or in lieu thereof, a new Warrant Certificate of the same tenor and for a like aggregate number of Warrants and of the same class.

(b) Upon the issuance of any new Warrant Certificate under this Section 2.8, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and other expenses (including the fees and expenses of the Warrant Agent and of counsel to the Company) in connection therewith.

(c) Every new Warrant Certificate executed and delivered pursuant to this Section 2.8 in lieu of any lost, wrongfully taken or destroyed Warrant Certificate shall constitute an additional contractual obligation of the Company, whether or not the allegedly lost, wrongfully taken or destroyed Warrant Certificate shall be at any time enforceable by anyone, and shall be entitled to the benefits of this Warrant Agreement equally and proportionately with any and all other Warrant Certificates duly executed and delivered hereunder.

(d) The provisions of this Section 2.8 are exclusive and shall preclude (to the extent lawful) all other rights or remedies with respect to the replacement of mutilated, lost, wrongfully taken, or destroyed Warrant Certificates.

ARTICLE 3

EXERCISE AND SETTLEMENT OF WARRANTS

Section 3.1 Right to Acquire Common Shares Upon Exercise. Each Warrant Certificate shall, when countersigned by the Warrant Agent, entitle the Warrantholder thereof, subject to the provisions thereof and of this Warrant Agreement, to acquire from the Company, for each Warrant evidenced thereby one Common Share at the Exercise Price, subject to adjustment as provided in this Warrant Agreement. The Exercise Price, and the number of Common Shares obtainable upon exercise of each Warrant, shall be adjusted from time to time as required by Article 4.

Section 3.2 Exercise Procedures for Warrants.

(a) In order to exercise all or any of the Warrants represented by a Warrant Certificate, the Warrantholder thereof must:

(i) (x) in the case of a Global Warrant Certificate, provide to the Warrant Agent at the Corporate Agency Office a duly completed and executed Exercise Notice as to the number of Warrants being exercised and, if applicable, whether Cashless Settlement is being elected with respect thereto, and deliver such Warrants by book-entry transfer through the facilities of the Depositary, to the Warrant Agent in accordance with the Applicable Procedures and otherwise comply with the Applicable Procedures in respect of the exercise of such Warrants or (y) in the case of a Definitive Warrant Certificate, at the Corporate Agency Office (A) surrender to the Warrant Agent the Warrant Certificate evidencing such Warrants and (B) deliver to the Warrant Agent a duly completed and executed Exercise Notice as to the Warrantholder's election to exercise the number of the Warrants specified therein and, if applicable, whether Cashless Settlement is being elected with respect thereto, duly executed by such Warrantholder; and

(ii) pay to the Warrant Agent an amount equal to (x) those applicable taxes and charges required to be paid by the Warrantholder, if any, pursuant to Section 3.11 (with all other taxes and charges being the responsibility of the Company pursuant to the first clause of Section 3.11) prior to, or concurrently with, exercise of such Warrants and (y) except in the case of a Cashless Settlement, the aggregate of the Exercise Price in respect of each Common Share into which such Warrants are exercisable, in case of (x) and (y), by wire transfer in immediately available funds, to the account (657601568) of the Company at J P Morgan Chase Bank, N.A. or such other account of the Company at such banking institution as the Company shall have given notice to the Warrant Agent and such Warrantholder in accordance with Section 6.14.

(b) If fewer than all the Warrants represented by a Warrant Certificate are exercised, (i) in the case of exercise of Warrants evidenced by a Global Warrant Certificate, the Warrant Agent shall endorse the "Schedule of Decreases of Warrants" attached to such Global Warrant Certificate to reflect the Warrants being exercised and (ii) in the case of exercise of Warrants evidenced by a Definitive Warrant Certificate, such Definitive Warrant Certificate shall be surrendered and a new Definitive Warrant Certificate of the same tenor and for the number of Warrants which were not exercised shall be executed by the Company. The Warrant Agent shall countersign the new Definitive Warrant Certificate, registered in such name or names, subject to the provisions of Section 2.5 regarding registration of Transfer and Section 3.11 regarding payment of governmental charges in respect thereof, as may be directed in writing by the Warrantholder, and shall deliver the new Definitive Warrant Certificate to the Person or Persons in whose name such new Warrant Certificate is so registered. The Company, whenever required by the Warrant Agent, will supply the Warrant Agent with Definitive Warrant Certificates duly executed on behalf of the Company for such purpose.

(c) Upon due exercise of Warrants evidenced by any Warrant Certificate in conformity with the foregoing provisions of Section 3.2(a), the Warrant Agent shall, when actions specified in Section 3.2(a)(i) have been effected and any payment specified in Section 3.2(a)(ii) is received, deliver to the Company the Exercise Notice received pursuant to Section 3.2(a)(i), deliver or deposit all funds received as instructed in writing by the Company and advise the Company by telephone at the end of such day of the amount of funds so deposited to its account. The Company shall thereupon, as promptly as practicable, and in any event within five Business Days after the Exercise Date referred to below, (i) determine the number of Common Shares issuable pursuant to exercise of such Warrants pursuant to Section 3.3 or, if Cashless Settlement applies, Section 3.4 and (ii) (x) in the case of exercise of Warrants evidenced by a Global Warrant Certificate, deliver or cause to be delivered to the Recipient (as defined below) in accordance with the Applicable Procedures Common Shares in book-entry form to be so held through the facilities of DTC in an amount equal to, or, if the Common Shares may not then be held in book-entry form through the facilities of DTC, duly executed certificates representing, or (y) in the case of exercise of Warrants evidenced by Definitive Warrant Certificates, deliver or cause to be delivered to the Recipient (as defined below) Common Shares in book-entry form on the Common Share registrar maintained by the Warrant Agent for such purpose, or, at the election of the Warrantholder, duly executed certificates representing, in case of (x) and (y), the aggregate number of Common Shares issuable upon such exercise (based upon the aggregate number of Warrants so exercised), as so determined, together with an amount in cash in lieu of any fractional share(s) pursuant to Section 3.6. The Common Shares in book-entry form or certificate or certificates representing Common Shares so delivered shall be, to the extent possible, in such denomination or denominations as such Warrantholder shall request in the applicable notice of exercise and shall be registered or otherwise placed in the name of, and delivered to, the Warrantholder or, subject to Section 3.11, such other Person as shall be designated by the Warrantholder in such notice (the Warrantholder or such other Person being referred to herein as the "**Recipient**").

(d) The date on which all of the requirements for exercise set forth in this Section 3.2 in respect of a Warrant have been satisfied is the "**Exercise Date**" with respect to such Warrant (subject to Section 3.2(h)).

(e) Subject to Section 3.2(g) and Section 3.2(h), any exercise of a Warrant pursuant to the terms of this Warrant Agreement shall be irrevocable and enforceable in accordance with its terms.

(f) All funds received by the Warrant Agent under this Warrant Agreement that are to be distributed or applied by the Warrant Agent in the performance of services in accordance with this Warrant Agreement (the "**Funds**") shall be held by the Warrant Agent as agent for the Company and deposited in one or more bank accounts to be maintained by the Warrant Agent in its name as agent for the Company (the "**Funds Account**"). Until paid pursuant to the terms of this Warrant Agreement, the Warrant Agent will hold the Funds through the Funds Account in deposit accounts of commercial banks with Tier 1 capital exceeding $1 billion or with an average rating above investment grade by S&P (LT Local Issuer Credit Rating), Moody's (Long Term Rating) and Fitch Ratings, Inc. (LT Issuer Default Rating), each as reported by Bloomberg Finance L.P. The Warrant Agent shall have no responsibility or liability for any diminution of the Funds that may result from any deposit made by the Warrant Agent in accordance with this paragraph, including any losses resulting from a default by any bank, financial institution or other third party. The Warrant Agent may from time to time receive interest, dividends or other earnings in connection with such deposits.

(g) Prior to the delivery of any Common Shares upon exercise of a Warrant, the Company shall be obligated to comply with all applicable Laws which require action to be taken by the Company in connection with such delivery. The Company shall assist and cooperate with any Exercising Owner that is required to make any governmental filings or obtain any governmental approvals prior to or in connection with receipt of Common Shares upon any exercise of a Warrant (including, without limitation, making any filings required to be made by the Company), and any exercise of a Warrant by a Warrantholder may be made contingent by it upon the making of any such filing and the receipt of any such approval.

(h) Notwithstanding any other provision of this Warrant Agreement, if the exercise of any Warrant is to be made in connection with a Liquidity Event, such exercise may, at the election of the Exercising Owner, be conditioned upon consummation of such transaction or event, in which case such exercise shall not be deemed effective until the consummation of such transaction or event.

(i) The Warrant Agent shall forward funds deposited in the Funds Account in a given week by the fifth Business Day of the following week by wire transfer to an account designated by the Company.

(j) In the case of Cash Settlement, payment of the applicable aggregate Exercise Price by or on behalf of an Exercising Owner upon exercise of Warrants shall be by federal wire or other immediately available funds payable to the account maintained by the Warrant Agent in its name as agent for the Company. The Warrant Agent shall

provide an exercising Warrantholder, upon request, with the appropriate payment instructions.

Section 3.3 Shares Issuable. The number of Common Shares "obtainable upon exercise" of Warrants at any time shall be the number of Common Shares into which such Warrants are then exercisable. The number of Common Shares "into which each Warrant is exercisable" shall be one share, subject to adjustment as provided in Article 4.

Section 3.4 Settlement of Warrants.

(a) Warrants may be exercised using Cash Settlement or Cashless Settlement in accordance with this Article 3 at any time prior to the Expiration Time, either in full or from time to time in part.

(b) Cash Settlement shall apply to each Warrant unless the Exercising Owner elects for Cashless Settlement to apply upon exercise of such Warrant. Such election shall be made in the Exercise Notice for such Warrant.

(c) If Cash Settlement applies to the exercise of a Warrant, upon the proper and valid exercise thereof by an Exercising Owner, the Company shall cause to be delivered to the Exercising Owner, the Cash Settlement Share Amount on the Settlement Date.

(d) If Cashless Settlement applies to the exercise of a Warrant:

(i) The Warrantholder must (A) expressly state in its Exercise Notice its desire to effect a Cashless Settlement and (B) must provide the Exercise Notice to the Warrant Agent at the Corporate Agency Office.

(ii) Upon the proper and valid exercise thereof by an Exercising Owner, the Company shall cause to be delivered to the Exercising Owner, the Cashless Settlement Share Amount on the Settlement Date, together with cash in lieu of any fractional Common Share, as provided in Section 3.6.

Section 3.5 Delivery of Common Shares.

(a) In connection with the exercise of Warrants, the Warrant Agent shall:

(i) examine all Exercise Notices and all other documents delivered to it to ascertain whether, on their face, such Exercise Notices and any such other documents have been executed and completed in accordance with their terms;

(ii) where an Exercise Notice or other document appears on its face to have been improperly completed or executed or some other irregularity in connection with the exercise of the Warrant exists, endeavor to inform the appropriate parties (including the Person submitting such instrument) of the need for fulfillment of all requirements, specifying those requirements which appear to be unfulfilled;

(iii) inform the Company of and cooperate with and assist the Company in resolving any reconciliation problems between the Exercise Notices received and delivery of Warrants to the Warrant Agent's account;

(iv) advise the Company with respect to an exercise, as promptly as practicable following the satisfaction of each of the applicable procedures for exercise set forth in Section 3.2(a) of (v) the receipt of such Exercise Notice and the number of Warrants exercised in accordance with the terms and conditions of this Warrant Agreement, (w) the number of Common Shares to be delivered by the Company, (x) the instructions with respect to issuance of the Common Shares, (y) the number of Persons who will become holders of record of the Company (who were not previously holders of record) as a result of receiving Common Shares upon exercise of the Warrants and (z) such other information as the Company shall reasonably require;

(v) promptly deposit in the Funds Account all Funds received in payment of the applicable Exercise Price in connection with any Cash Settlement of Warrants;

(vi) provide to the Company, upon the Company's request, the number of Warrants previously exercised, the number of Common Shares issued in connection with such exercises and the number of remaining outstanding Warrants; and

(vii) provide to the Company, upon the Company's request, any Exercise Notices delivered pursuant to Section 3.2(a) and any documents delivered pursuant to Section 3.5(b)(i)(B).

(b) With respect to each properly exercised Warrant evidenced by any Warrant Certificate in accordance with this Warrant Agreement, (i) (x) in the case of exercise of Warrants evidenced by a Global Warrant Certificate, the Company shall deliver or cause to be delivered to the Recipient in accordance with the Applicable Procedures Common Shares in book-entry form to be so held through the facilities of DTC in an amount equal to, or, if the Common Shares may not then be held in book-entry form through the facilities of DTC, duly executed certificates representing, or (y) in the case of exercise of Warrants evidenced by Definitive Warrant Certificates, deliver or cause to be delivered to the Recipient Common Shares in book-entry form on the Common Share registrar maintained by the Warrant Agent for such purpose, or, at the election of the Warrantholder, duly executed certificates representing, in case of (x) or (y), the aggregate number of Common Shares issuable upon such exercise (based upon the aggregate number of Warrants so exercised) (A) unless clause (B) is applicable, for the benefit and in the name of the Warrantholder or (B) for the benefit and in the name of such Person (other than the Warrantholder) designated by the Warrantholder submitting the applicable Exercise Notice; and (ii) the Warrant Agent shall deliver such Common Shares to such Person pursuant to clause (i)(A) or (i)(B), as applicable. The Person on whose behalf and in whose name any Common Shares are registered shall for all purposes be deemed to have become the holder of record of such Common Shares as of the Close of Business on the applicable Exercise Date. The Company covenants that all Common Shares which may be issued upon exercise of Warrants will be, upon payment

of the Exercise Price and issuance thereof, fully paid and nonassessable, free of preemptive rights and (except as specified in the proviso to Section 3.11) free from all taxes, liens, charges and security interests with respect to the issuance thereof.

(c) Promptly after the Warrant Agent has taken the action required by this Section 3.5 (or at such later time as may be mutually agreeable to the Company and the Warrant Agent), the Warrant Agent shall account to the Company with respect to the consummation of any exercise of any Warrants.

Section 3.6 No Fractional Common Shares to Be Issued.

(a) Notwithstanding anything to the contrary in this Warrant Agreement, the Company shall not be required to issue any fraction of a Common Share upon exercise of any Warrants.

(b) If any fraction of a Common Share would, except for the provisions of this Section 3.6, be issuable on the exercise of any Warrants, the Company shall make a cash payment in lieu of issuing such fractional Common Share equal to the Fair Market Value of one Common Share, as determined on the date the Warrant is presented for exercise, multiplied by such fraction, rounded to the nearest whole cent. All Warrants exercised by a Warrantholder on the same Exercise Date shall be aggregated for purposes of determining the number of Common Shares to be delivered pursuant to Section 3.5(b).

(c) Each Warrantholder, by its acceptance of an interest in a Warrant, expressly waives its right to any fraction of a Common Share upon its exercise of such Warrant.

Section 3.7 Acquisition of Warrants by Company. The Company shall have the right, except as limited by Law, to purchase or otherwise to acquire one or more Warrants at such times, in such manner and for such consideration as agreed by the Company and the applicable Warrantholder.

Section 3.8 Validity of Exercise. All questions as to the validity, form and sufficiency (including time of receipt) of a Warrant exercise shall be determined by the Company in good faith in accordance with the terms of this Warrant Agreement and the Warrants, which determination, absent manifest error, shall be final and binding with respect to the Warrant Agent. The Warrant Agent shall incur no liability for or in respect of and, except to the extent such liability arises from the Warrant Agent's gross negligence, willful misconduct, actual fraud or material breach of this Warrant Agreement (as determined by a court of competent jurisdiction in a final non-appealable judgment) and shall be indemnified and held harmless by the Company for acting or refraining from acting upon, or as a result of, such determination by the Company. The Company reserves the absolute right to waive any of the conditions to the exercise of Warrants or defects in Exercise Notices with regard to any particular exercise of Warrants.

Section 3.9 Certain Calculations.

(a) The Warrant Agent shall be responsible for performing all calculations, except for the case of Cashless Settlements, required in connection with the exercise and settlement of the Warrants as described in this Article 3. In connection therewith, the

Warrant Agent shall provide prompt written notice to the Company, in accordance with Section 3.5(a)(iv), of the number of Common Shares deliverable upon exercise and settlement of Warrants. The Company shall be responsible for all calculations and determinations required in connection with any Cashless Settlements and shall provide written notification to the Warrant Agent of the Cashless Settlement Share Amount to be issued on the Settlement Date for any Cashless Settlement. The Warrant Agent shall not be responsible for performing the calculations set forth in Article 4.

(b) The Warrant Agent shall not be accountable with respect to the validity or value of any Common Shares that may at any time be issued or delivered upon the exercise of any Warrant, and it makes no representation with respect thereto. The Warrant Agent shall not be responsible, to the extent not arising from the Warrant Agent's gross negligence, willful misconduct or actual fraud (as determined by a court of competent jurisdiction in a final non-appealable judgment), for any failure of the Company to issue, transfer or deliver any Common Shares, or to comply materially with any of the covenants of the Company contained in this Article 3 of this Warrant Agreement.

Section 3.10 Reservation and Listing of Shares. The Company will at all times reserve and keep available, out of its authorized but unissued Common Shares, solely for the purpose of providing for the exercise of the Warrants, the aggregate number of Common Shares then issuable upon exercise of the Warrants at any time and shall take all action required to increase the authorized number of Common Shares if at any time there shall be insufficient authorized but unissued Common Shares to permit such reservation or to permit the exercise of a Warrant (an "**Authorized Share Failure**"). Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than 180 days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its stockholders for the approval of an increase in the number of authorized Common Shares. In connection with such meeting, the Company shall use its best efforts to solicit its stockholders' approval of such increase in authorized Common Shares and to cause its Board to recommend to the stockholders that they approve such proposal. The Company shall instruct the transfer agent to deliver to the Warrant Agent, upon written request from the Warrant Agent, stock certificates (or beneficial interests therein) required to honor outstanding Warrants upon exercise thereof in accordance with the terms of this Warrant Agreement. The Company will (A) procure, at its sole expense, the listing of the Common Shares issuable upon exercise of the Warrants at any time, subject to issuance or notice of issuance, on all National Securities Exchanges and Alternative Securities Exchanges on which the Common Shares are then listed or traded and (B) maintain such listings of such Common Shares at all times after issuance. The Company shall take all action reasonably necessary to ensure that the Common Shares will be issued without violation of any applicable Law or regulation or of any requirement of any securities exchange on which the Common Shares are listed or traded.

Section 3.11 Charges, Taxes and Expenses. Issuance of the Warrant Certificates evidencing Warrants and issuance of Common Shares upon the exercise of the Warrants shall be made without charge for any documentary, stamp or similar issue or transfer tax or other incidental expense in respect of the issuance thereof, all of which taxes and expenses shall be paid by the Company; provided, however, that the Company shall not be required to pay any tax

that may be payable in respect of any Transfer involved in the issuance and delivery of Warrant Certificates evidencing such Warrants or Common Shares in book-entry form or any certificates for Common Shares or payment of cash or other property in a name or to any Person other than the Warrantholder of the Warrant Certificate surrendered upon exercise or Transfer, and the Company shall not be required to issue or deliver Warrant Certificates or Common Shares in book-entry form or any certificates for Common Shares or payment of cash or other property, as applicable, unless and until the Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have reasonably demonstrated that such tax has been paid.

Section 3.12 Cancellation of Warrant Certificates. Any Definitive Warrant Certificate surrendered for exercise shall, if surrendered to the Company, be delivered to the Warrant Agent. All Warrant Certificates surrendered or delivered to or received by the Warrant Agent for cancellation pursuant to this Section 3.12 or Section 2.4(e) or Section 2.4(k) shall be promptly cancelled by the Warrant Agent and shall not be reissued by the Company. The Warrant Agent shall destroy any such cancelled Warrant Certificates and deliver its certificate of destruction to the Company, unless the Company shall otherwise direct.

ARTICLE 4

ADJUSTMENTS

Section 4.1 Adjustments and Other Rights. The Exercise Price and the number of Common Shares into which each Warrant is to be convertible pursuant to Article 3 of this Warrant Agreement shall be subject to adjustment from time to time in accordance with this Article 4; provided that (i) no single event shall be subject to adjustment under more than one subsection of this Article 4 so as to result in duplication and (ii) if any single event would otherwise require adjustment of the Exercise Price pursuant to more than one such subsection, the adjustment that provides the highest value relative to the rights and interests of each Warrantholder shall be made; provided, further that, notwithstanding any provision of this Warrant Agreement to the contrary, any adjustment shall be made to the extent (and only to the extent) that such adjustment would not cause or result in a Warrantholder and its Affiliates, collectively, being in violation of any applicable Law, regulation or rule of any governmental authority or self-regulatory organization. Any adjustment (or portion thereof) prohibited pursuant to the immediately foregoing proviso shall be postponed and implemented on the first date on which such implementation would not result in the condition described in such proviso.

Section 4.2 Dividends, Distributions, Stock Splits, Subdivisions, Reclassifications or Combinations. If the Company shall (i) declare a dividend or make a distribution on its Common Shares in Common Shares, (ii) split, subdivide, recapitalize, restructure or reclassify the outstanding Common Shares into a greater number of Common Shares or effect a similar transaction or (iii) combine, recapitalize, restructure or reclassify the outstanding Common Shares into a smaller number of Common Shares or effect a similar transaction, in each case other than upon a transaction to which Section 4.5 or Section 4.6 applies, the number of Common Shares issuable upon exercise of a Warrant at the time of the Record Date for such dividend or distribution or the effective date of such split, subdivision, combination, recapitalization, restructuring, reclassification or similar transaction shall be proportionately adjusted so that the Warrantholder, after such date, shall be entitled to purchase the number of

Common Shares which such Warrantholder would have owned or been entitled to receive on such date had such Warrant been exercised immediately prior to such date. In such event, the Exercise Price in effect at the time of the Record Date for such dividend or distribution or the effective date of such split, subdivision, combination, recapitalization, restructuring, reclassification or similar transaction shall be adjusted to the number obtained by dividing (x) the product of (i) the number of Common Shares issuable upon the exercise of a Warrant before such adjustment and (ii) the Exercise Price in effect immediately prior to the Record Date or effective date, as the case may be, for such dividend, distribution, split, subdivision, combination, recapitalization, restructuring, reclassification or similar transaction giving rise to this adjustment by (y) the new number of Common Shares issuable upon exercise of a Warrant determined pursuant to the immediately preceding sentence.

Section 4.3 **Other Distributions**. In case the Company shall fix a Record Date for the making of a distribution to all holders of its Common Shares of (a) shares of any class other than Common Shares, (b) evidence of indebtedness of the Company or any Subsidiary, (c) other Securities, assets or cash (excluding dividends or distributions referred to in Section 4.2) or (d) rights or warrants (other than in connection with the adoption of a stockholder rights plan), in each such case, the Exercise Price in effect prior thereto shall be reduced immediately thereafter to the price obtained by multiplying the Exercise Price in effect immediately prior thereto by the fraction resulting from dividing (x) an amount equal to the difference resulting from (i) the number of Common Shares outstanding on such Record Date multiplied by the Fair Market Value of the Common Shares on the trading date immediately prior to such Record Date less (ii) the Fair Market Value of said shares, evidences of indebtedness, assets, cash, rights or warrants to be so distributed in the aggregate to all Common Shares outstanding on such Record Date by (y) the number of Common Shares outstanding on such Record Date multiplied by the Fair Market Value of the Common Shares on the trading date immediately prior to such Record Date. Such adjustment shall be made successively whenever such a Record Date is fixed. In such event, the number of Common Shares issuable upon the exercise of a Warrant shall be increased to the number obtained by dividing (x) the product of (i) the number of Common Shares issuable upon the exercise of a Warrant before such adjustment and (ii) the Exercise Price in effect immediately prior to the Record Date for the distribution giving rise to this adjustment by (y) the new Exercise Price determined in accordance with the second preceding sentence. In the event that such distribution is not so made, the Exercise Price and the number of Common Shares issuable upon exercise of a Warrant then in effect shall be readjusted, effective as of the date when the Board determines not to distribute such shares, evidences of indebtedness, assets, cash, rights or warrants, as the case may be, to the Exercise Price that would then be in effect and the number of Common Shares that would then be issuable upon exercise of a Warrant if such Record Date had not been fixed.

Section 4.4 **Dissolution, Total Liquidation or Winding Up**. If at any time there is a voluntary or involuntary dissolution, total liquidation or winding-up of the Company, then the Company shall provide each Warrantholder with written notice of the date on which such dissolution, liquidation or winding-up shall take place (and, in any event, not less than 30 days before any date set for definitive action). Such notice shall also specify the date as of which the record holders of Common Shares shall be entitled to exchange their Common Shares for Securities, money or other property deliverable upon such dissolution, liquidation or winding-up, as the case may be. On such date, each Warrantholder shall be entitled to receive, upon surrender of its Warrant for each Common Share then receivable upon exercise of such Warrant, the cash,

Securities or other property, less the Exercise Price for such Warrant then in effect, that such Warrantholder would have been entitled to receive in respect of such Common Share had such Warrant been exercised immediately prior to such dissolution, liquidation or winding-up. Upon receipt of such cash, Securities or other property, any and all rights of such Warrantholder to exercise such Warrant shall terminate in their entirety. If the cash, Securities or other property distributable in respect of such Common Share in the dissolution, liquidation or winding-up has a Fair Market Value which is less than the Exercise Price for such Warrant then in effect, no such cash, Securities or other property shall be delivered to such Warrantholder in respect of such Warrants and such Warrant shall terminate and be of no further force or effect upon the dissolution, liquidation or winding-up.

Section 4.5 Successor upon Consolidation, Merger and Sale of Assets.

(a) Other than with respect to a Liquidity Event, the Company may only consolidate or merge with any other Person (a "**Fundamental Equity Change**"), so long as the Company is the surviving Person, or, in the event that the Company is not the surviving Person:

(i) the successor to the Company assumes all of the Company's obligations under this Warrant Agreement and the Warrants in form and substance reasonably satisfactory to the Required Warrantholders; and

(ii) the successor to the Company provides written notice of such assumption to the Warrant Agent.

(b) In the case of any Fundamental Equity Change other than a Liquidity Event, the successor entity shall succeed to and be substituted for the Company with the same effect as if it had been named herein as the Company; provided, however, such successor entity shall provide the Warrant Agent with any such identifying corporate information as reasonably required by the Warrant Agent. Such successor entity thereupon may cause to be signed, and may issue any or all of the Warrants issuable pursuant to this Warrant Agreement which theretofore shall not have been signed by the Company; and, upon the order of such successor entity, instead of the Company, and subject to all the terms, conditions and limitations in this Warrant Agreement prescribed, the Warrant Agent shall authenticate and deliver, as applicable, any Warrants that previously shall have been signed and delivered by the officers of the Company to the Warrant Agent for authentication, and any Warrants which such successor entity thereafter shall cause to be signed and delivered to the Warrant Agent for such purpose.

(c) If a Liquidity Event is consummated prior to the Expiration Time and the Company duly and timely effects notice to the Warrantholders in accordance with Section 4.10, then any Warrants that are unexercised prior to the consummation of such Liquidity Event shall be deemed to have expired worthless and will be cancelled for no further consideration.

Section 4.6 Adjustment upon Reorganization Event.

(a) If there occurs any Fundamental Equity Change (other than a Liquidity Event) or any recapitalization, reorganization, consolidation, reclassification, change in

the outstanding Common Shares (other than changes resulting from a subdivision or combination to which Section 4.2 applies), statutory share exchange or other transaction (each such event a "**Reorganization Event**"), in each case as a result of which the Common Shares would be converted into, changed into or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (the "**Reference Property**"), then following the effective time of the Reorganization Event, the right to receive Common Shares upon exercise of a Warrant shall be changed to a right to receive, upon exercise of such Warrant, the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of one Common Shares would have owned or been entitled to receive in connection with such Reorganization Event (such kind and amount of Reference Property per share of Common Shares, a "**Unit of Reference Property**"). In the event holders of Common Shares have the opportunity to elect the form of consideration to be received in a Reorganization Event, the type and amount of consideration into which the Warrants shall be exercisable from and after the effective time of such Reorganization Event shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Shares in such Reorganization Event. The Company hereby agrees not to become a party to any Reorganization Event unless its terms are consistent with this Section 4.6.

(b) At any time from, and including, the effective time of a Reorganization Event:

(i) if Cash Settlement applies upon exercise of a Warrant, the Cash Settlement Share Amount shall be equal to a single Unit of Reference Property;

(ii) if Cashless Settlement applies upon exercise of a Warrant, the Cashless Settlement Share Amount shall be calculated pursuant to the definition thereof with one fully paid and nonassessable Common Share equal to a single Unit of Reference Property;

(iii) the Company shall pay cash in lieu of issuing such fractional Unit of Reference Property or any fractional Warrant in accordance with Section 3.6 based on the Fair Market Value of the Unit of Reference Property as of the Exercise Date; and

(iv) the Fair Market Value shall be calculated with respect to a Unit of Reference Property.

(c) On or prior to the effective time of any Reorganization Event (other than a Liquidity Event), the Company or the successor or purchasing Person, as the case may be, shall execute an amendment to this Warrant Agreement providing that the Warrants shall be exercisable for Units of Reference Property in accordance with the terms of this Section 4.6. If the Reference Property in connection with any Reorganization Event includes shares of stock or other securities and assets of a Person other than the successor or purchasing Person, as the case may be, in such Reorganization Event, then the Company shall cause such amendment to this Warrant Agreement to be executed by such other Person and such amendment shall contain such additional provisions to protect the interests of the Warrantholder (for the benefit of the Beneficial Owners under this

Warrant Agreement) as the Board and the Required Warrantholders shall reasonably consider necessary by reason of the foregoing. Any such amendment to this Warrant Agreement shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 4. In the event the Company shall execute an amendment to this Warrant Agreement pursuant to this Section 4.6, the Company shall promptly file with the Warrant Agent a certificate executed by a duly authorized officer of the Company briefly stating the reasons therefor, the kind or amount of cash, securities or property or assets that will comprise a Unit of Reference Property after the relevant Reorganization Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with. The Company shall cause notice of the execution of the amendment to be mailed to the Warrantholder, at its address appearing on the Warrant Register, within five Business Days after execution thereof.

(d) The above provisions of this Section 4.6 shall similarly apply to successive Reorganization Events.

(e) If this Section 4.6 applies to any event or occurrence, no other provision of this Article 4 shall apply to such event or occurrence (other than Section 4.5).

Section 4.7 Rounding of Calculations; Minimum Adjustments. All calculations under this Article 4 shall be made to the nearest one-tenth (1/10th) of a cent or to the nearest one-hundredth (1/100th) of a share, as the case may be. Any provision of this Article 4 to the contrary notwithstanding, no adjustment in the Exercise Price or the number of Common Shares issuable upon the exercise of a Warrant shall be made if the amount of such adjustment would be less than $0.01 or one-tenth (1/10th) of a Common Share, respectively, but any such amount shall be carried forward and an adjustment with respect thereto shall be made at the time of and together with any subsequent adjustment which, together with such amount and any other amount or amounts so carried forward, shall aggregate $0.01 or 1/10th of a Common Share, respectively, or more, subject in all cases to Section 3.6.

Section 4.8 Timing of Issuance of Additional Common Shares Upon Certain Adjustments. In any case in which the provisions of this Article 4 shall require that an adjustment shall become effective immediately after a Record Date for an event or an agreement to issue or sell Common Shares or Convertible Securities, the Company may defer until the occurrence of such event, issuance or sale (i) issuing to each Warrantholder of a Warrant exercised after such Record Date or date of such agreement and before the occurrence of such event, issuance or sale the additional Common Shares issuable upon such exercise by reason of the adjustment required by such Record Date or agreement over and above the Common Shares issuable upon such exercise before giving effect to such adjustment and (ii) paying to such Warrantholder any amount of cash in lieu of a fractional Common Share.

Section 4.9 Statement Regarding Adjustments. Whenever the Exercise Price or the number of Common Shares issuable upon exercise of a Warrant shall be adjusted as provided in this Article 4, the Company shall promptly, and in any event within three Business Days, file, at the principal office of the Company, a statement showing in reasonable detail the facts requiring such adjustment and the Exercise Price that shall be in effect and the number of Common Shares issuable upon exercise of a Warrant after such adjustment. The Company shall also cause a copy

of such statement to be delivered to each Warrantholder at the address appearing in the Company's records.

Section 4.10 Notice of Adjustment Event. In the event that (i) the Company shall propose to take any action of the type described in this Article 4 or (ii) the Company fixes any Record Date for any event, the Company shall give notice to each Warrantholder, in the manner set forth in Section 4.9, which notice shall specify the Record Date, if any, with respect to any such action and the approximate date on which such action is to take place. Such notice shall also set forth the facts with respect thereto (including the material terms with respect to any contemplated transaction) and indicate the effect on the Exercise Price and the number, kind or class of shares or other Securities or property which shall be deliverable upon exercise or exchange of a Warrant, if any. Such notice shall be given at least 10 days prior to the taking of such proposed action; provided that notice of any Liquidity Event shall be given at least 21 days prior to the taking of such proposed action. Failure to give such notice, or any defect therein, shall not affect the legality or validity of any such action. Nothing herein shall prohibit the Warrantholders from exercising their Warrants during the 10 day period commencing on the date of such notice (21 days in the case of a Liquidity Event).

Section 4.11 Proceedings Prior to Any Action Requiring Adjustment. As a condition precedent to the taking of any action which would require an adjustment pursuant to this Article 4, the Company shall take any action which may be necessary, including obtaining regulatory, stock exchange (if applicable) or stockholder approvals or exemptions under the Securities Act, in order that the Company may thereafter validly and legally issue, as fully paid and nonassessable, all Common Shares that each Warrantholder is entitled to receive upon exercise of a Warrant.

Section 4.12 Adjustment Rules. Any adjustments pursuant to this Article 4 shall be made successively whenever an event referred to herein shall occur. If an adjustment in the Exercise Price made hereunder would reduce the Exercise Price to an amount below the par value of the Common Shares, then such adjustment in the Exercise Price made hereunder shall reduce the Exercise Price to the par value of the Common Shares and then, so long as the Company shall have taken any corporate action which would, in the opinion of its counsel, be necessary in order that the Company may validly issue Common Shares at the Exercise Price as so adjusted in accordance with its obligations under Section 3.9, to such lower par value as may then be established.

Section 4.13 Optional Tax Adjustment. The Company may at its option, at any time prior to the Expiration Time, increase the number of Common Shares into which each Warrant is exercisable, or decrease the Exercise Price for such Warrant, in addition to those changes otherwise required by this Article 4, as deemed advisable by the Board, in order that any event treated for Federal income tax purposes as a dividend of stock or stock rights shall not be taxable to the recipients or that such tax shall be diminished.

Section 4.14 **Stockholder Rights Plans**. If the Company has a stockholder rights plan in effect with respect to the Common Shares, upon exercise of a Warrant the applicable Beneficial Owner shall be entitled to receive, in addition to the Common Share, the rights under such stockholder rights plan, subject to readjustment in the event of the expiration, termination or redemption of such rights.

ARTICLE 5

OTHER PROVISIONS RELATING TO RIGHTS OF WARRANTHOLDERS

Section 5.1 **No Rights as Stockholders**. Nothing contained in this Warrant Agreement shall be construed as conferring upon any Person, by virtue in and of itself of holding a Warrant Certificate evidencing any Warrant or having a beneficial interest in a Warrant, the right to vote, receive any dividend or other distribution, receive notice of, or attend, any meeting of stockholders or otherwise exercise any rights whatsoever, in each case, as a stockholder of the Company to the extent such vote, dividend, giving of notice, meeting or other exercise of rights (or, if applicable, the relevant Record Date therefor) precedes the Close of Business on the Exercise Date with respect to the exercise of such Warrant. No Warrantholder shall have any right not expressly conferred hereunder or under, or by applicable Law with respect to, the Warrant Certificate held by such holder.

Section 5.2 **Modification/Amendment**.

(a) This Warrant Agreement or the Warrants may be modified or amended by the Company and the Warrant Agent, without the consent of any Warrantholder, for the purposes of (i) curing any ambiguity or correcting or supplementing any defective provision contained in this Warrant Agreement or (ii) providing for the assumption of the Company's obligations pursuant to Section 4.5; provided that, in each case, any such modification or amendment does not adversely affect the interests of the Warrantholders in any material respect.

(b) This Warrant Agreement or the Warrants may be modified or amended, or noncompliance with any provision of the Warrant Agreement or the Warrants may be waived, only upon the written consent of the Required Warrantholders and the Company; provided, however, that any modification, amendment or waiver that adversely affects the interests of a Warrantholder disproportionately relative to any other Warrantholder (including any Beneficial Owner) in any material respect shall require the written consent of such Warrantholder so affected; provided, further, no such modification, amendment or waiver may, without the written consent or the affirmative vote of each Warrantholder affected (A) change the Expiration Time to an earlier time or date; or (B) increase the Exercise Price or decrease the number of Common Shares for which a Warrant is exercisable (except as set forth in Article 4). Any consent delivered by electronic means shall be deemed to constitute written consent.

(c) Upon execution and delivery of any amendment pursuant to this Section 5.2, such amendment shall be considered a part of this Warrant Agreement for all purposes and every Warrantholder holding a Warrant Certificate theretofore or thereafter countersigned and delivered hereunder shall be bound thereby.

Section 5.3 **Rights of Action**. All rights of action against the Company in respect of this Warrant Agreement are vested in the Warrantholders, and any Warrantholder, without the consent of the Warrant Agent or any other Warrantholder, may, on such Warrantholder's own behalf and for such Warrantholder's own benefit, enforce and may institute and maintain any suit, action or proceeding against the Company suitable to enforce, or otherwise in respect of, such Warrantholder's right to exercise such Warrantholder's Warrants in the manner provided in this Warrant Agreement.

Section 5.4 **Issuance Obligation Remedies**. Nothing in this Warrant Agreement shall limit the right of any Warrantholder to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance or injunctive relief with respect to the Company's violation of its obligations under this Warrant Agreement, including, without limitation, any failure by the Company to timely issue Warrant Shares upon exercise of such Warrant as required pursuant to the terms hereof.

Section 5.5 **No Impairment**.

(a) The Company will not, by amendment to its Company's certificate of incorporation or bylaws or through reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of the Warrants or this Warrant Agreement, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Warrantholders and the Beneficial Owners under this Warrant Agreement against impairment.

(b) Without limiting the generality of the foregoing, the Company will (a) not increase the par value of any Common Shares obtainable upon the exercise of the Warrants and (b) take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Common Shares upon the exercise of the Warrants.

(c) Before taking any action that would cause an adjustment reducing the Exercise Price below the then par value of the Common Shares, the Company will take any corporate action that may be necessary in order that the Company may validly and legally issue paid and non-assessable shares of Common Shares at such adjusted Exercise Price.

ARTICLE 6

CONCERNING THE WARRANT AGENT AND OTHER MATTERS

Section 6.1 **Change of Warrant Agent**.

(a) The Warrant Agent, or any successor to it hereafter appointed, may resign its duties and be discharged from all further duties and liabilities hereunder (except for liability arising as a result of the Warrant Agent's own gross negligence, willful misconduct actual fraud or material breach of this Warrant Agreement) after giving 60 days' notice in writing to the Company, except that such shorter notice may be given as the Company shall, in writing, accept as sufficient. If the office of the Warrant Agent becomes vacant by resignation or incapacity to act or otherwise, the Company shall

appoint in writing a successor warrant agent in place of the Warrant Agent. If the Company shall fail to make such appointment within a period of 30 days after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated warrant agent or by the Required Warrantholders, then the Required Warrantholders may appoint a successor warrant agent.

(b) The Warrant Agent may be removed by the Company at any time upon 30 days' written notice to the Warrant Agent; provided, however, that the Company shall not remove the Warrant Agent until a successor warrant agent meeting the qualifications hereof shall have been appointed; provided, further, that, until such successor warrant agent has been appointed, the Company shall compensate the Warrant Agent in accordance with Section 6.2.

(c) Any successor warrant agent, whether appointed by the Company or by such a court, shall be a corporation or banking association organized, in good standing and doing business under the Laws of the United States of America or any state thereof or the District of Columbia, and authorized under such Laws to exercise corporate trust powers and subject to supervision or examination by federal or state authority and having a combined capital and surplus of not less than $50,000,000. The combined capital and surplus of any such successor warrant agent shall be deemed to be the combined capital and surplus as set forth in the most recent report of its condition published prior to its appointment; provided that such reports are published at least annually pursuant to Law or to the requirements of a federal or state supervising or examining authority.

(d) After acceptance in writing of such appointment by the successor warrant agent, such successor warrant agent shall be vested with all the authority, powers, rights, immunities, duties and obligations of its predecessor warrant agent with like effect as if originally named as warrant agent hereunder, without any further act or deed; but if for any reason it becomes necessary or appropriate, the predecessor warrant agent shall execute and deliver, at the expense of the Company, an instrument transferring to such successor warrant agent all the authority, powers and rights of such predecessor warrant agent hereunder; and upon request of any successor warrant agent, the Company shall make, execute, acknowledge and deliver any and all instruments in writing to more fully and effectually vest in and conform to such successor warrant agent all such authority, powers, rights, immunities, duties and obligations. Upon assumption by a successor warrant agent of the duties and responsibilities hereunder, the predecessor warrant agent shall deliver and transfer, at the expense of the Company, to the successor warrant agent any property at the time held by it hereunder. As soon as practicable after such appointment, the Company shall give notice thereof to the predecessor warrant agent and each transfer agent for its Common Shares. Failure to give such notice, or any defect therein, shall not affect the validity of the appointment of the successor warrant agent.

(e) Any entity into which the Warrant Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Warrant Agent shall be a party, or any Person succeeding to all or substantially all of the corporate trust or agency business of the Warrant Agent, shall be the successor warrant agent under this Warrant Agreement without the execution or filing of any paper or any further act on the part of any of the

parties hereto; provided, however, that such entity would be eligible for appointment as a successor warrant agent under Section 6.1(c).

Section 6.2 Compensation; Further Assurances. The Company agrees that it will (a) pay the Warrant Agent reasonable compensation for its services as Warrant Agent in accordance with Exhibit C attached hereto and, except as otherwise expressly provided, will pay or reimburse the Warrant Agent upon written demand for all reasonable and documented expenses, disbursements and advances incurred or made by the Warrant Agent in accordance with any of the provisions of this Warrant Agreement (including the reasonable and documented compensation, expenses and disbursements of its counsel incurred in connection with the execution and administration of this Warrant Agreement), except any such expense, disbursement or advance as may arise from its or any of their gross negligence, willful misconduct or actual fraud, and (b) perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Warrant Agent for the carrying out or performing of the provisions of this Warrant Agreement. The Warrant Agent agrees to provide the Company with prior written notice of the retention of counsel whose compensation, expenses and disbursements are to be paid or reimbursed by the Company under this Section 6.2.

Section 6.3 Reliance on Counsel. The Warrant Agent may consult with legal counsel (who may be legal counsel for the Company), and the written opinion of such counsel or any advice of legal counsel subsequently confirmed by a written opinion of such counsel shall be full and complete authorization and protection to the Warrant Agent as to any action taken or omitted by it in good faith and in accordance with such written opinion or advice.

Section 6.4 Proof of Actions Taken. Whenever in the performance of its duties under this Warrant Agreement the Warrant Agent shall deem it necessary or desirable that any matter be proved or established by the Company prior to taking or suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the good faith of the Warrant Agent, be deemed to be conclusively proved and established by a certificate executed by a duly authorized officer of the Company delivered to the Warrant Agent, and such certificate shall, in the good faith of the Warrant Agent, be relied upon by the Warrant Agent for any action taken, suffered or omitted in good faith by it under the provisions of this Warrant Agreement; provided that in its discretion, the Warrant Agent may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as to it may seem reasonable.

Section 6.5 Correctness of Statements. The Warrant Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Warrant Agreement (except its countersignature thereof) or be required to verify the same, and all such statements and recitals are and shall be deemed to have been made by the Company only.

Section 6.6 Validity of Agreement. From time to time, the Warrant Agent may apply to any duly authorized officer of the Company for instruction, and the Company shall provide the Warrant Agent with such instructions concerning the services to be provided hereunder. The Warrant Agent shall not be held to have notice of any change of authority of any Person, until receipt of notice thereof from the Company. The Warrant Agent shall not be responsible for any breach by the Company of any covenant or condition contained in this Warrant Agreement, nor shall it by any act hereunder be deemed to make any representation or warranty as to the

authorization or reservation of any Common Shares to be issued pursuant to this Warrant Agreement or any Warrants or as to whether any Common Shares will, when issued, be validly issued, fully paid and nonassessable. The Warrant Agent and its agents and subcontractors shall not be liable and shall be indemnified by the Company for any action taken or omitted by Warrant Agent in reliance in good faith upon any Company instructions except to the extent that the Warrant Agent had actual knowledge of facts and circumstances that would render such reliance unreasonable.

Section 6.7 Use of Agents. The Warrant Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys or agents provided that the Warrant Agent shall remain responsible for the activities or omissions of any such agent or attorney and reasonable care has been exercised in the selection and in the continued employment of such attorney or agent.

Section 6.8 Liability of Warrant Agent. The Warrant Agent shall incur no liability or responsibility to the Company or to any Warrantholder for any action taken or not taken (a) in reliance on any notice, resolution, waiver, consent, order, certificate, or other paper, document or instrument reasonably believed by it to be genuine and to have been signed, sent and presented by the proper party or parties or (b) in relation to its services under this Warrant Agreement, unless such liability arises out of or is attributable to the Warrant Agent's gross negligence, material breach of this Warrant Agreement, willful misconduct or actual fraud. The Company agrees to indemnify the Warrant Agent and save it harmless against any and all losses, expenses and liabilities, including judgments, costs and reasonable counsel fees, for anything done or omitted in good faith by the Warrant Agent in the execution of this Warrant Agreement or otherwise arising in connection with this Warrant Agreement, except as a result of the Warrant Agent's gross negligence, material breach of this Warrant Agreement, willful misconduct or actual fraud (as determined by a court of competent jurisdiction in a final non-appealable judgment). The Warrant Agent shall be liable hereunder only for its gross negligence, material breach of this Warrant Agreement, actual fraud or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment), for which the Warrant Agent is not entitled to indemnification under this Warrant Agreement.

Section 6.9 Legal Proceedings. The Warrant Agent shall be under no obligation to institute any action, suit or legal proceeding or to take any other action likely to involve expense unless the Company or any Warrantholder shall furnish the Warrant Agent with reasonable indemnity for any costs and expenses which may be incurred, but this provision shall not affect the power of the Warrant Agent to take such action as the Warrant Agent may consider proper, whether with or without any such security or indemnity. The Warrant Agent shall promptly notify the Company and each Warrantholder in writing of any claim made or action, suit or proceeding instituted against it arising out of or in connection with this Warrant Agreement.

Section 6.10 Actions as Agent.

(a) The Warrant Agent shall act hereunder solely as agent and not in a ministerial or fiduciary capacity, and its duties shall be determined solely by the provisions hereof. The duties and obligations of the Warrant Agent shall be determined solely by the express provisions of the Warrant Agreement or of the Warrant Certificates, and the Warrant Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth in the Warrant Agreement or in the Warrant

Certificates. No implied covenants or obligations shall be read into the Warrant Agreement against the Warrant Agent. The Warrant Agent shall not be liable for anything that it may do or refrain from doing in good faith in connection with this Warrant Agreement except for its own gross negligence, willful misconduct or actual fraud.

(b) The Warrant Agent shall not, by countersigning Warrant Certificates or by any other act hereunder, be deemed to make any representations as to validity or authorization of the Warrants or the Warrant Certificates (except as to its countersignature thereon). The Warrant Agent shall not be responsible for any failure of the Company to make any cash payment or to issue, transfer or deliver any Common Shares or stock certificates or other securities or property upon the surrender of any Warrant Certificate for the purpose of exercise or upon any adjustment pursuant to Article 4 hereof or to comply with any of the covenants of the Company contained in Article 4 hereof.

(c) The Warrant Agent shall not (i) be liable for any recital or statement of fact contained herein or in the Warrant Certificates or for any action taken, suffered or omitted by it in good faith on the belief that any Warrant Certificate or any other documents or any signatures are genuine or properly authorized, (ii) be responsible for any failure on the part of the Company to comply with any of its covenants and obligations contained in this Warrant Agreement or in the Warrant Certificates or (iii) be liable for any act or omission in connection with this Warrant Agreement except for its own gross negligence, actual fraud or willful misconduct.

(d) The Warrant Agent is hereby authorized to accept and protected in accepting instructions with respect to the performance of its duties hereunder by Company Order and to apply to any such officer named in such Company Order for instructions (which instructions will be promptly given in writing when requested), and the Warrant Agent shall not be liable for any action taken or suffered to be taken by it in good faith in accordance with the instructions in any Company Order.

Section 6.11 Appointment and Acceptance of Agency. The Company hereby appoints the Warrant Agent to act as agent for the Company in accordance with the instructions set forth in this Warrant Agreement, and the Warrant Agent hereby accepts the agency established by this Warrant Agreement and agrees to perform the same upon the terms and conditions set forth in this Warrant Agreement and in the Warrant Certificates or as the Company and the Warrant Agent may hereafter agree, by all of which the Company and the Warrantholders of Warrant Certificates, by their acceptance thereof, shall be bound; provided, however, that the terms and conditions contained in the Warrant Certificates are subject to and governed by this Warrant Agreement or any other terms and conditions hereafter agreed to by the Company and the Warrant Agent.

Section 6.12 Appointment of Countersigning Agent.

(a) The Warrant Agent may appoint a Countersigning Agent or Agents which shall be authorized to act on behalf of the Warrant Agent to countersign Warrant Certificates issued upon original issue and upon exchange, registration of Transfer or pursuant to Section 2.8, and Warrant Certificates so countersigned shall be entitled to the

benefits of this Warrant Agreement equally and proportionately with any and all other Warrant Certificates duly executed and delivered hereunder. Wherever reference is made in this Warrant Agreement to the countersignature and delivery of Warrant Certificates by the Warrant Agent or to Warrant Certificates countersigned by the Warrant Agent, such reference shall be deemed to include countersignature and delivery on behalf of the Warrant Agent by a Countersigning Agent and Warrant Certificates countersigned by a Countersigning Agent. Each Countersigning Agent shall be acceptable to the Company and shall at the time of appointment be a corporation doing business under the Laws of the United States of America or any State thereof in good standing, authorized under such Laws to act as Countersigning Agent, and having a combined capital and surplus of not less than $25,000,000. The combined capital and surplus of any such new Countersigning Agent shall be deemed to be the combined capital and surplus as set forth in the most recent annual report of its condition published by such Countersigning Agent prior to its appointment; provided, however, such reports are published at least annually pursuant to Law or to the requirements of a Federal or state supervising or examining authority.

(b) Any corporation into which a Countersigning Agent may be merged or any corporation resulting from any consolidation to which such Countersigning Agent shall be a party, shall be a successor Countersigning Agent without any further act; provided, that, such corporation would be eligible for appointment as a new Countersigning Agent under the provisions of Section 6.12(a), without the execution or filing of any paper or any further act on the part of the Warrant Agent or the Countersigning Agent. Any such successor Countersigning Agent shall promptly cause notice of its succession as Countersigning Agent to be given in accordance with Section 6.14 to each Warrantholder of a Warrant Certificate at such Warrantholder's last address as shown on the Warrant Register.

(c) A Countersigning Agent may resign at any time by giving 30 days' prior written notice thereof to the Warrant Agent and to the Company. The Warrant Agent may at any time terminate the agency of a Countersigning Agent by giving 30 days' prior written notice thereof to such Countersigning Agent and to the Company.

(d) The Warrant Agent agrees to pay to each Countersigning Agent from time to time reasonable compensation for its services under this Section 6.12 and the Warrant Agent shall be entitled to be reimbursed for such payments, subject to the provisions of Section 6.2.

(e) Any Countersigning Agent shall have the same rights and immunities as those of the Warrant Agent set forth in Section 6.8 and Section 6 10.

Section 6.13 Successors and Assigns. All the covenants and provisions of this Warrant Agreement by or for the benefit of the Company or the Warrant Agent shall bind and inure to the benefit of their respective successors and assigns hereunder. The Warrant Agent may assign this Warrant Agreement or any rights and obligations hereunder, in whole or in part, to an Affiliate thereof with the prior consent of the Company, provided that the Warrant Agent may make such an assignment without consent of the Company to any successor to the Warrant Agent by consolidation, merger or transfer of its assets subject to the terms and conditions of this Warrant Agreement.

Section 6.14 **Notices**. Any notice or demand authorized by this Warrant Agreement to be given or made to the Company shall be sufficiently given or made if sent by mail first-class, postage prepaid, addressed (until another address is filed in writing by the Company with the Warrant Agent) or electronic mail, as follows:

Chesapeake Energy Corporation
6100 North Western Avenue,
Oklahoma City, Oklahoma 73118
Attention: James R. Webb, Executive Vice President, General Counsel and Corporate Secretary
Email: jim.webb@chk.com

Any notice or demand authorized by this Warrant Agreement to be given or made to the Warrant Agent shall be sufficiently given or made if sent by mail first-class, postage prepaid, addressed (until another address is filed in writing by the Warrant Agent with the Company) or electronic mail, as follows:

Equiniti Trust Company
P.O. Box 64874
St. Paul, MN 55164
Attention: Nancy Petersen
Email: Nancy.Petersen@equiniti.com

Any notice or demand authorized by this Warrant Agreement to be given or made to any Warrantholder shall be sufficiently given or made if sent by first-class mail, postage prepaid or electronic mail to the last address of the Warrantholder as it shall appear on the Warrant Register, with a copy (which shall not constitute notice) to its counsel listed on such Warrant Register.

Section 6.15 **Applicable Law; Jurisdiction**. The validity, interpretation and performance of this Warrant Agreement and the Warrant Certificates evidencing the Warrants shall be governed in accordance with the Laws of the State of New York, without giving effect to the principles of conflicts of Laws thereof that would result in the application of Law of another jurisdiction. The parties hereto irrevocably consent to the exclusive jurisdiction of the courts of the State of New York and any federal court located in such state in connection with any action, suit or proceeding arising out of or relating to this Warrant Agreement or the Warrant Certificates issued hereunder. Each party agrees to commence any such suit, action or proceeding in such court. Each party hereto hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any suit, action or proceeding with respect to this Warrant Agreement or the Warrant Certificates issued hereunder, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason other than the failure to serve process in accordance with this Section 6.15, that its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise), and to the fullest extent permitted by applicable Law, that the suit, action or proceeding in any such court is brought in an inconvenient forum, or that this Warrant Agreement or the Warrant Certificates issued hereunder, or the subject matter hereof, may not be enforced in or by such courts and further irrevocably waives, to the fullest extent permitted by applicable Law, the benefit of any defense that would hinder, fetter or delay the levy, execution or collection of any amount to which the

party is entitled pursuant to the final judgment of any court having jurisdiction. Each party irrevocably consents to the service of process out of any of the aforementioned courts in any such suit, action or proceeding by the mailing of copies thereof by registered mail, postage prepaid, to such party at its mailing address determined in accordance with this Warrant Agreement, such service of process to be effective upon acknowledgment of receipt of such registered mail. Nothing herein shall affect the right of any party to serve process in any other manner permitted by Law.

Section 6.16 **Waiver of Jury Trial**. EACH OF THE COMPANY AND THE WARRANT AGENT ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS WARRANT AGREEMENT OR A WARRANT CERTIFICATE EVIDENCING A WARRANT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PERSON HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PERSON MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS WARRANT AGREEMENT OR A WARRANT CERTIFICATE EVIDENCING A WARRANT. EACH OF THE COMPANY AND THE WARRANT AGENT CERTIFIES AND ACKNOWLEDGES THAT (a) NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (b) SUCH PERSON UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (c) SUCH PERSON MAKES THIS WAIVER VOLUNTARILY, AND (d) SUCH PERSON HAS BEEN INDUCED TO ENTER INTO THIS WARRANT AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 6.17 **Specific Performance**. Each of the Company and the Warrant Agent acknowledges that a breach or threatened breach by such party of any of its obligations under this Warrant Agreement would give rise to irreparable harm to the other party hereto for which monetary damages would not be an adequate remedy and hereby agrees that in the event of a breach or a threatened breach by such party of any such obligations, the other party hereto shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction.

Section 6.18 **Benefit of this Warrant Agreement**. Nothing in this Warrant Agreement expressed and nothing that may be implied from any of the provisions hereof is intended, or shall be construed, to confer upon, or give to, any Person other than the parties hereto and the Warrantholders any right, remedy or claim under or by reason of this Warrant Agreement or of any covenant, condition, stipulation, promise or agreement hereof, and all covenants, conditions, stipulations, promises and agreements in this Warrant Agreement contained shall be for the sole and exclusive benefit of the parties hereto and their respective successors and permitted assigns and the Warrantholders. Each Warrantholder, by acceptance of a Warrant Certificate, agrees to all of the terms and provisions of this Warrant Agreement applicable thereto.

Section 6.19 **Registered Warrantholder**. Every Warrantholder, by accepting a Warrant Certificate, consents and agrees with the Company, with the Warrant Agent and with every subsequent holder of such Warrant Certificate that, prior to due presentment for registration of Transfer, the Company and the Warrant Agent may deem and treat the Person in whose name any Warrant Certificates are registered in the Warrant Register as the absolute owner thereof and of the Warrants evidenced thereby for all purposes whatever (notwithstanding any notation of ownership or other writing thereon made by anyone other than the Company or the Warrant Agent) and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary or be bound to recognize any equitable or other claim to or interest in any Warrant Certificates or any Warrants evidenced thereby on the part of any other Person and shall not be liable for any registration of Transfer of Warrant Certificates that are registered or to be registered in the name of a fiduciary or the nominee of a fiduciary unless made with actual knowledge that a fiduciary or nominee is committing a breach of trust in requesting such registration of Transfer or with such knowledge of such facts that its participation therein amounts to actual fraud.

Section 6.20 **Headings**. The Article and Section headings herein are for convenience only and are not a part of this Warrant Agreement and shall not affect the interpretation thereof.

Section 6.21 **Counterparts**. This Warrant Agreement may be executed in any number of counterparts on separate counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument. A signed copy of this Warrant Agreement delivered by e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Warrant Agreement.

Section 6.22 **Entire Agreement**. This Warrant Agreement constitutes the entire agreement of the Company, the Warrant Agent and the Warrantholders with respect to the subject matter hereof and supersede all prior agreements and undertakings, both written and oral, among the Company, the Warrant Agent and the Warrantholders with respect to the subject matter hereof.

Section 6.23 **Severability**. Wherever possible, each provision of this Warrant Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Warrant Agreement shall be prohibited by or invalid under applicable Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Warrant Agreement.

Section 6.24 **Termination**. This Warrant Agreement shall terminate at the earlier to occur of (i) the Expiration Time (or, if later, Close of Business on the Settlement Date with respect to all exercises of Warrants as to which the respective Exercise Date is prior to the Expiration Time) and (ii) the date on which all outstanding Warrants have been exercised. All provisions regarding indemnification, warranty, liability and limits thereon shall survive the termination or expiration of this Warrant Agreement.

Section 6.25 **Confidentiality**. The Warrant Agent and the Company agree that personal, non-public Warrantholder information which is exchanged or received pursuant to the negotiation or the carrying out of this Warrant Agreement shall remain confidential, and shall not be voluntarily disclosed to any other Person, except disclosures pursuant to bankruptcy proceedings, applicable securities Laws or otherwise as may be required by Law, including, without limitation, pursuant to subpoenas from state or federal government authorities.

Section 6.26 **Rule 144 Information**. If and when the Company becomes subject to the reporting obligations of the Securities Act and the Exchange Act, the Company covenants that it will use its reasonable best efforts to timely file all reports and other documents required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations promulgated by the U.S. Securities and Exchange Commission thereunder. In addition, whether or not the Company becomes subject to the reporting obligations of the Securities Act or the Exchange Act, the Company will use reasonable best efforts to take such further action as the Warrantholders may reasonably request, all to the extent required from time to time to enable such Warrantholders to sell the Warrants without registration under the Securities Act within the limitation of the exemptions provided by (i) Rule 144 or Regulation S under the Securities Act, as such rules may be amended from time to time or (ii) any successor rule or regulation hereafter adopted by the U.S. Securities and Exchange Commission.

Section 6.27 **Representations and Warranties of the Company**. The Company hereby represents and warrants to the Warrantholders that (i) it has the corporate power and authority to execute this Warrant Agreement and consummate the transactions contemplated by this Warrant Agreement, (ii) there are no statutory or contractual stockholders' preemptive rights or rights of refusal with respect to the issuance of any Warrants and (iii) the execution and delivery by the Company of this Warrant Agreement and the issuance of the Common Shares upon exercise of any Warrant do not and shall not (A) conflict with or result in a breach of the terms, conditions or provisions of, (B) constitute a default under, (C) result in the creation of any lien, security interest, charge or encumbrance upon the Company's capital stock or assets pursuant to, (D) result in a violation of, or (E) require any authorization, consent, approval, exemption or other action by or notice or declaration to, or filing with, any court or administrative or governmental body or agency pursuant to, the Company's certificate of incorporation or bylaws or any Law in effect as of the date hereof to which the Company is subject, or any agreement, instrument, order, judgment or decree to which the Company is subject as of the date hereof, except for any such authorization, consent, approval, notice or exemption required under applicable securities Laws.

[signature page follows]

IN WITNESS WHEREOF, this Warrant Agreement has been duly executed by the parties hereto as of the day and year first above written.

CHESAPEAKE ENERGY CORPORATION

By: /s/ James R. Webb

Name: James R. Webb

Title: Executive Vice President – General Counsel and Corporate Secretary

EQUINITI TRUST COMPANY

By: /s/ Martin J. Knapp

Name: Martin J. Knapp

Title: SVP, Relationship Director

EXHIBIT A

[Face of Warrant Certificate][1]

CHESAPEAKE ENERGY CORPORATION

WARRANT CERTIFICATE

EVIDENCING

CLASS A WARRANTS TO PURCHASE COMMON STOCK

[FACE]

No. [__] CUSIP No. 165167 164

[UNLESS THIS GLOBAL WARRANT CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("**DTC**"), TO CHESAPEAKE ENERGY CORPORATION (THE "**COMPANY**"), THE CUSTODIAN OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFER OF THIS GLOBAL WARRANT CERTIFICATE SHALL BE LIMITED TO TRANSFERS IN WHOLE, AND NOT IN PART, TO THE COMPANY, DTC, THEIR SUCCESSORS AND THEIR RESPECTIVE NOMINEES.][2]

[1] To be removed in the versions of the Warrant Certificates printed in multiple copies for use by the Warrant Agent in preparing Warrants Certificates for issuance and delivery from time to time to holders.

[2] Include only on Global Warrant Certificate.

No. [__] 11,111,111 Warrants

CUSIP No. 165167 164

THIS CERTIFIES THAT, for value received, [_____], or registered assigns, is the registered owner of the number of Class A Warrants to Purchase Common Shares of Chesapeake Energy Corporation, an Oklahoma corporation (the "**Company**", which term includes any successor thereto under the Warrant Agreement) specified above [or such lesser number as may from time to time be endorsed on the "Schedule of Decreases" attached hereto][3], and is entitled, subject to and upon compliance with the provisions hereof and of the Warrant Agreement, at such Warrantholder's option, at any time when the Warrants evidenced hereby are exercisable, to purchase from the Company one Common Share of the Company for each Warrant evidenced hereby, at the purchase price of $27.63 per share (as adjusted from time to time, the "**Exercise Price**"), payable in full at the time of purchase, the number of Common Shares into which and the Exercise Price at which each Warrant shall be exercisable each being subject to adjustment as provided in Article 4 of the Warrant Agreement.

All Common Shares issuable by the Company upon the exercise of Warrants shall, upon such issuance, be duly and validly issued and fully paid and nonassessable.

Each Warrant evidenced hereby may be exercised by the Warrantholder hereof at the Exercise Price then in effect on any Business Day from and after the Closing Date until the Expiration Time (as defined on the reverse hereof).

Subject to the provisions hereof and of the Warrant Agreement, the Warrantholder of this Warrant Certificate may exercise all or any whole number of the Warrants evidenced hereby by [providing notice to the Warrant Agent at its office maintained for such purpose (the "**Corporate Agency Office**") a duly completed and executed Exercise Notice as to the number of Warrants being exercised and, if applicable, whether Cashless Settlement is being elected with respect thereto, and delivering such Warrants by book-entry transfer through the facilities of the Depositary, to the Warrant Agent in accordance with the Applicable Procedures and otherwise complying with Applicable Procedures in respect of the exercise of such Warrants][4] [surrendering to the Warrant Agent this Warrant Certificate at the Corporate Agency Office and delivering to the Warrant Agent a duly completed and executed Exercise Notice as to whether Cashless Settlement is being elected with respect thereto][5], together with payment in full to the Warrant Agent of (x) those applicable taxes and charges required to be paid by the Warrantholder, if any, and (y) except in the case of a Cashless Settlement, the aggregate of the Exercise Price as then in effect for each Common Share receivable upon exercise of each Warrant being submitted for exercise. Any such payment of the Exercise Price is to be by wire transfer in immediately available funds to such account of the Company at such banking institution as the Company shall have designated from time to time for such purpose.

[3] Include only on Global Warrant Certificate.

[4] Include only on Global Warrant Certificate.

[5] Include only on Definitive Warrant Certificate.

Reference is hereby made to the further provisions of this Warrant Certificate set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless this Warrant Certificate has been countersigned by the Warrant Agent by manual signature of an authorized officer on behalf of the Warrant Agent, this Warrant Certificate shall not be valid for any purpose and no Warrant evidenced hereby shall be exercisable.

IN WITNESS WHEREOF, the Company has caused this certificate to be duly executed under its corporate seal.

Dated: February 9, 2021

CHESAPEAKE ENERGY CORPORATION

By: _____
Name: James R. Webb
Title: Executive Vice President - General Counsel and Corporate Secretary

ATTEST:

Countersigned:

Equiniti Trust Company, as Warrant Agent

OR

By: _____
Authorized Agent

Equiniti Trust Company, as Warrant Agent

By: _____
as Countersigning Agent

By: _____
Authorized Officer

[Reverse of Warrant Certificate]

CHESAPEAKE ENERGY CORPORATION

WARRANT CERTIFICATE

EVIDENCING

CLASS A WARRANTS TO PURCHASE COMMON STOCK

The Class A Warrants evidenced hereby are one of a duly authorized issue of Warrants of the Company designated as its Warrants to Purchase Common Shares ("**Warrants**"), limited in aggregate number to 11,111,111 initially issued under and in accordance with the Warrant Agreement, dated as of February 9, 2021 (the "**Warrant Agreement**"), between the Company and Equiniti Trust Company, as warrant agent (the "**Warrant Agent**", which term includes any successor thereto permitted under the Warrant Agreement), to which the Warrant Agreement and all amendments thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Warrant Agent, the Warrantholders of Warrant Certificates and the owners of the Warrants evidenced thereby and of the terms upon which the Warrant Certificates are, and are to be, countersigned and delivered. A copy of the Warrant Agreement shall be available at all reasonable times at the office of the Warrant Agent for inspection by the Warrantholder hereof.

Except as provided in the Warrant Agreement, all outstanding Warrants shall expire and all rights of the Warrantholders of Warrant Certificates evidencing such Warrants shall terminate and cease to exist, as of the earlier of (i) 5:00 p.m., New York time, on February 9, 2026 and (ii) the date of consummation of any Liquidity Event (the "**Expiration Time**").

If fewer than all the Warrants represented by a Warrant Certificate are exercised, [the Warrant Agent shall endorse the "Schedule of Decreases of Warrants" attached to the Global Warrant Certificate to reflect the Warrants being exercised.][6] [such Definitive Warrant Certificate shall be surrendered and a new Definitive Warrant Certificate of the same tenor and class and for the number of Warrants which were not exercised shall be executed by the Company upon the written order of the Warrantholder of this Warrant Certificate upon the cancellation hereof.][7]

The Warrant Certificates are issuable only in registered form in denominations of whole numbers of Warrants. Upon surrender at the office of the Warrant Agent and payment of the charges specified herein and in the Warrant Agreement, this Warrant Certificate may be exchanged for Warrant Certificates in other authorized denominations or the Transfer hereof may be registered in whole or in part in authorized denominations to one or more designated Transferees; provided, however, that such other Warrant Certificates issued upon exchange or registration of Transfer shall evidence the same aggregate number and class of Warrants as this Warrant Certificate. The Company shall cause to be kept at the office of the Warrant Agent the

[6] Include only on Global Warrant Certificate.

[7] Include only on Definitive Warrant Certificates.

Warrant Register in which, subject to such reasonable regulations as the Warrant Agent may prescribe and such regulations as may be prescribed by Law, the Company shall provide for the registration of Warrant Certificates and of Transfers or exchanges of Warrant Certificates. Issuance of the Warrant Certificates evidencing Warrants and issuance of Common Shares upon the exercise of the Warrants shall be made without charge for any documentary, stamp or similar issue or transfer tax or other incidental expense in respect of the issuance thereof, all of which taxes and expenses shall be paid by the Company; provided, however, the Company shall not be required to pay any tax that may be payable in respect of any Transfer involved in the issuance and delivery of Warrant Certificates evidencing such Warrants or Common Shares in book-entry form or any certificates for Common Shares or payment of cash or other property in a name or to any Person other than the Warrantholder of the Warrant Certificate surrendered upon exercise or Transfer, and the Company shall not be required to issue or deliver Warrant Certificates or Common Shares in book-entry form or any certificates for Common Shares or payment of cash or other property, as applicable, unless and until the Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have reasonably determined that such tax has been paid.

Prior to due presentment of this Warrant Certificate for registration of Transfer, the Company, the Warrant Agent and any agent of the Company or the Warrant Agent may treat the Person in whose name this Warrant Certificate is registered as the owner hereof for all purposes, and neither the Company, the Warrant Agent nor any such agent shall be affected by notice to the contrary.

The Warrant Agreement permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Warrantholders of Warrant Certificates under the Warrant Agreement at any time by the Company and the Warrant Agent with the consent of the Required Warrantholders.

Nothing contained in the Warrant Agreement or this Warrant Certificate shall be construed as conferring upon any Person, by virtue in and of itself of holding a Warrant Certificate evidencing any Warrant or having a beneficial interest in a Warrant, the right to vote, receive any dividend or other distribution, receive notice of, or attend, any meeting of stockholders or otherwise exercise any rights whatsoever, in each case, as a stockholder of the Company to the extent such vote, dividend, giving of notice, meeting or other exercise of rights (or, if applicable, the relevant Record Date therefor) precedes the Close of Business on the Exercise Date with respect to the exercise of such Warrant. No Warrantholder shall have any right not expressly conferred hereunder or under, or by applicable Law with respect to, the Warrant Certificate held by such holder.

This Warrant Certificate, each Warrant evidenced thereby and the Warrant Agreement shall be governed by and construed in accordance with the Laws of the State of New York.

All terms used in this Warrant Certificate which are defined in the Warrant Agreement shall have the meanings assigned to them in the Warrant Agreement. In the event of any conflict between this Warrant Certificate and the Warrant Agreement, the Warrant Agreement shall control.

Form of Exercise

[Address]

Attention:

Re: Warrant Agreement dated as of February 9, 2021 between Chesapeake Energy Corporation (the "**Company**") and Equiniti Trust Company, as Warrant Agent (as it may be supplemented or amended, the "**Warrant Agreement**")

The undersigned hereby irrevocably elects to exercise the right to exercise ____ Warrants and receive the consideration deliverable in exchange therefor pursuant to the following settlement method (check one):

Cash Settlement

Cashless Settlement

If Cash Settlement is elected, the undersigned shall tender payment of the Exercise Price therefor in accordance with instructions received from the Warrant Agent.

Please check below if this exercise is contingent upon a Liquidity Event in accordance with Section 3.2(e) of the Warrant Agreement.

This exercise is being made in connection with a Liquidity Event; provided, that in the event that such transaction shall not be consummated, then this exercise shall be deemed revoked.

THIS EXERCISE NOTICE MUST BE DELIVERED TO THE WARRANT AGENT PRIOR TO THE EXPIRATION TIME. THE WARRANT AGENT SHALL NOTIFY YOU OF THE ADDRESS AND PHONE NUMBER WHERE YOU CAN CONTACT THE WARRANT AGENT AND TO WHICH WARRANT EXERCISE NOTICES ARE TO BE SUBMITTED.

All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Warrant Agreement.

Dated: _____

_____
(Insert Social Security or Other Identifying Number of Warrantholder)

Name: _____
(Please Print)

Address: _____

_____

_____
Signature

(Signature must conform in all respects to name of Warrantholder as specified on the face of this Warrant Certificate and must bear a signature guarantee by a bank, trust company or member firm of a U.S. national securities exchange.)

Signature Guaranteed:

Instructions (i) as to denominations and names of Common Shares issuable upon exercise and as to delivery of such securities and any other property issuable upon exercise and (ii) if applicable, as to Warrant Certificates evidencing unexercised Warrants:

Assignment

(Form of Assignment To Be Executed If Warrantholder Desires To Transfer Warrant Certificate)

FOR VALUE RECEIVED _____ hereby sells, assigns and transfers unto

Please insert social security or
other identifying number

(Please print name and address including zip code)

the Warrants represented by the within Warrant Certificate and does hereby irrevocably constitute and appoint _____ Attorney, to transfer said Warrant Certificate on the books of the within-named Company with full power of substitution in the premises.

Dated: _____ Signature _____

(Signature must conform in all respects to name of Warrantholder as specified on the face of this Warrant Certificate and must bear a signature guarantee by a bank, trust company or member firm of a U.S. national securities exchange.)

[SCHEDULE A]

SCHEDULE OF DECREASES IN WARRANTS

The following decreases in the number of Warrants evidenced by this Global Warrant Certificate have been made:

Date	Amount of decrease in number of Warrants evidenced by this Global Warrant Certificate	Number of Warrants evidenced by this Global Warrant following such decrease	Signature of authorized signatory][8]

[8] Include only on Global Warrant Certificate.

EXHIBIT B

FORM OF EXERCISE NOTICE

[Address]

Attention: Transfer Department

Re: Warrant Agreement dated as of February 9, 2021 between Chesapeake Energy Corporation (the "**Company**") and Equiniti Trust Company, as Warrant Agent (as it may be supplemented or amended, the "**Warrant Agreement**").

The undersigned hereby irrevocably elects to exercise the right to exercise ____ Warrants and receive the consideration deliverable in exchange therefor pursuant to the following settlement method (check one):

Cash Settlement

Cashless Settlement

If Cash Settlement is elected, the undersigned shall tender payment of the Exercise Price therefor in accordance with instructions received from the Warrant Agent.

Please check below if this exercise is contingent upon a Liquidity Event in accordance with Section 3.2(e) of the Warrant Agreement.

This exercise is being made in connection with a Liquidity Event; provided, that in the event that such transaction shall not be consummated, then this exercise shall be deemed revoked.

THIS EXERCISE NOTICE MUST BE DELIVERED TO THE WARRANT AGENT PRIOR TO THE EXPIRATION TIME. THE WARRANT AGENT SHALL NOTIFY YOU OF THE ADDRESS AND PHONE NUMBER WHERE YOU CAN CONTACT THE WARRANT AGENT AND TO WHICH WARRANT EXERCISE NOTICES ARE TO BE SUBMITTED.

All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Warrant Agreement.

Dated: _____

_____
(Insert Social Security or Other Identifying Number of Warrantholder)

Name: _____
(Please Print)

Address: _____

_____

_____
Signature

(Signature must conform in all respects to name of Warrantholder as specified on the face of this Warrant Certificate and must bear a signature guarantee by a bank, trust company or member firm of a U.S. national securities exchange.)

Signature Guaranteed:

Instructions (i) as to denominations and names of Common Shares issuable upon exercise and as to delivery of such securities and any other property issuable upon exercise and (ii) if applicable, as to Warrant Certificates evidencing unexercised Warrants:

EXHIBIT C

Fee Schedule

The Company shall pay the Warrant Agent for performance of its services under this Warrant Agreement such compensation as shall be agreed in writing between the Company and the Warrant Agent.

Exhibit 10.4

WARRANT AGREEMENT

dated as of February 9, 2021 between

CHESAPEAKE ENERGY CORPORATION

and

EQUINITI TRUST COMPANY

as Warrant Agent

Class B Warrants to Purchase Common Shares

TABLE OF CONTENTS

WARRANT AGREEMENT

Warrant Agreement (as it may be amended from time to time, this "**Warrant Agreement**"), dated as of February 9, 2021, between Chesapeake Energy Corporation, an Oklahoma corporation (the "**Company**"), and Equiniti Trust Company, as warrant agent (the "**Warrant Agent**").

WHEREAS, pursuant to the Joint Plan of Reorganization (the "**Plan**") of the Company and certain of its debtor affiliates under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**") approved by the United States Bankruptcy Court for the Southern District of Texas, Houston Division, certain warrants (the "**Warrants**") to purchase Common Shares (as defined herein) of the Company shall be issued;

WHEREAS, the Warrants and the Common Shares underlying the Warrants have been offered and sold in reliance on the exemption from the registration requirements of the Securities Act and any applicable state securities or "blue sky" laws afforded by Section 1145(a) of the Bankruptcy Code; and

WHEREAS, the Company desires that the Warrant Agent act on behalf of the Company and the Warrant Agent is willing to act, in connection with the issuance, exchange, Transfer (as defined below), substitution and exercise of Warrants.

NOW THEREFORE in consideration of the mutual agreements herein contained, the Company and the Warrant Agent agree as follows.

ARTICLE 1

DEFINITIONS

Section 1.1 Certain Definitions.

"**Affiliate**" shall mean, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such first specified Person. For the purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"**Agent Members**" has the meaning set forth in Section 2.4(b) hereof.

"**Alternative Securities Exchange**" means, excluding any National Securities Exchange, any other securities exchange or over-the-counter quotation system, including, without limitation, the NYSE MKT, the Nasdaq Capital Market, any quotation or other listing service provided by the OTC Markets Group or the Financial Industry Regulatory Authority, Inc., any "pink sheet" or other alternative listing service or any successor or substantially equivalent service to any of the foregoing.

"**Applicable Procedures**" means, with respect to any Transfer or exchange of, or exercise of any Warrants evidenced by, any Global Warrant Certificate, the rules and procedures of the Depositary that apply to such Transfer, exchange or exercise.

"**Authentication Order**" means a Company Order for authentication and delivery of Warrants.

"**Authorized Share Failure**" has the meaning set forth in Section 3.10 hereof.

"**Bankruptcy Code**" has the meaning set forth in the Recitals.

"**Beneficial Owner**" means any Person beneficially owning an interest in a Global Warrant, which interest is credited to the account of a direct participant in the Depository for the benefit of such Person through the book-entry system maintained by the Depository (or its agent). For the avoidance of doubt, any direct participant of the Depository may also be a Beneficial Owner.

"**Board**" means the board of directors of the Company from and after the Plan Effective Date.

"**Business Day**" means any day other than a Saturday, a Sunday, a day which is a legal holiday in the State of New York, or a day on which banking institutions and trust companies in the State of New York are authorized or obligated by Law, regulation or executive order to close.

"**Cash Settlement**" means the settlement method pursuant to which an Exercising Owner shall be entitled to receive from the Company, for each Warrant exercised, a number of fully paid and nonassessable Common Shares equal to the Cash Settlement Share Amount in exchange for payment in cash by the Exercising Owner of the applicable Exercise Price for each such Common Share so receivable upon exercise of such Warrant.

"**Cash Settlement Share Amount**" means, for each Warrant exercised as to which Cash Settlement is applicable, one fully paid and nonassessable Common Share, subject to adjustment in accordance with Article 4.

"**Cashless Settlement**" means the settlement method pursuant to which an Exercising Owner shall be entitled to receive from the Company, for each Warrant exercised, a number of Common Shares equal to the Cashless Settlement Share Amount without any payment of cash therefor.

"**Cashless Settlement Share Amount**" means for each Warrant exercised as to which an exercising owner elects Cashless Settlement, one fully paid and nonassessable Common Share, subject to adjustment in accordance with Article 4, *multiplied* by a fraction equal to (i) the Fair Market Value (as of the Exercise Date for such Warrant) of one Common Share minus the Exercise Price therefor *divided* by (ii) such Fair Market Value. The number of Common Shares issuable upon exercise, on the same Exercise Date, of Warrants as to which Cashless Settlement is applicable shall be aggregated for each Warrantholder, together with cash in lieu of any fractional Common Share, as provided in Section 3.6. In no event shall the Company deliver a fractional Common Share in connection with an exercise of Warrants as to which Cashless Settlement is applicable.

"**Class B Warrants**" has the meaning set forth in Section 2.1(a).

"**Close of Business**" means 5:00 p.m., New York City time.

"**Closing Date**" means the Plan Effective Date.

"**Common Shares**" means shares of the common stock, par value $0.01 per share, of the Company issued on or after the Plan Effective Date.

"**Company**" has the meaning set forth in the Preamble.

"**Company Order**" means a written request or order signed in the name of the Company by any two officers, at least one of whom must be its Chief Executive Officer, Chief Financial Officer, its Treasurer, any Assistant Treasurer, its Secretary or any Assistant Secretary, and delivered to the Warrant Agent.

"**Convertible Security**" means any Specified Convertible Security issued by the Company that is convertible into, or exercisable or exchangeable for, directly or indirectly, Common Shares.

"**Corporate Agency Office**" has the meaning set forth in Section 2.5(a) hereof.

"**Countersigning Agent**" means any Person authorized by the Warrant Agent to act on behalf of the Warrant Agent to countersign Warrant Certificates.

"**Definitive Warrant Certificate**" means a Warrant Certificate registered in the name of the Warrantholder thereof that does not bear the Global Warrant Legend and that does not have a "Schedule of Decreases of Warrants" attached thereto.

"**Depositary**" means DTC and its successors as depositary hereunder.

"**DTC**" means The Depository Trust Company.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended from time to time, and the related rules and regulations promulgated thereunder.

"**Exempt Transaction**" shall mean a merger, reorganization or consolidation that results in the voting securities of the Company outstanding immediately prior thereto continuing to represent immediately following such merger, reorganization or consolidation (either by remaining outstanding or by being converted into voting securities of the surviving entity or the ultimate parent company of such surviving entity) more than 50% of the combined voting power of the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation (or the ultimate parent company of the Company or such surviving entity).

"**Exercise Date**" has the meaning set forth in Section 3.2(d).

"**Exercise Notice**" means, for any Warrant, an exercise notice substantially in the form set forth in Exhibit B hereto.

"**Exercising Owner**" means any Warrantholder that exercises Warrants pursuant to the terms hereof.

"**Exercise Price**" means $32.13, subject to adjustment as provided in Article 4.

"**Expiration Time**" means the earlier of (i) the Close of Business on February 9, 2026 and (ii) the date of consummation of any Liquidity Event.

"**Fair Market Value,**" as of a specified date, means the price per Common Share or per unit of other Securities or other distributed property determined as follows:

(i) in the case of Common Shares or other Securities listed on a National Securities Exchange, the VWAP of a Common Share or a single unit of such other Security for the 10 Trading Days immediately preceding the specified date (or if the Common Shares or other Securities have been listed for less than 10 Trading Days, the VWAP for such lesser period of time);

(ii) in the case of Common Shares or other Securities listed on an Alternative Securities Exchange, the VWAP of a Common Share or a single unit of such other Security in composite trading for the principal U.S. national or regional securities exchange on which such Securities are then listed for the 10 Trading Days immediately preceding the specified date (or if the Common Shares or other Securities have been listed for less than 10 Trading Days, the VWAP for such lesser period of time);

(iii) in the case of Common Shares or other Securities that are publicly traded but are not listed on a National Securities Exchange or an Alternative Securities Exchange, the average of the reported bid and ask prices of a Common Share or a single unit of such other Security in the over-the-counter market on which such Securities are then traded for the 10 Trading Days immediately preceding the specified date (or if the Common Shares or other Securities have been publicly traded (but not listed) for less than 10 Trading Days, the average of the reported bid and ask prices for such lesser period of time); or

(iv) in all other cases, the Fair Market Value per Common Share or per unit of other Securities or other distributed property as of a date not earlier than 20 Business Days preceding the specified date as reasonably determined in good faith by the Board.

For the avoidance of doubt, no third party appraisal shall be required in connection with any Warrant that is exercised using Cashless Settlement.

"**Fundamental Equity Change**" has the meaning set forth in Section 4.5(a) hereof.

"**Funds**" has the meaning set forth in Section 3.2(f) hereof.

"**Funds Account**" has the meaning set forth in Section 3.2(f) hereof.

"**Global Warrant Certificate**" means a Warrant Certificate deposited with or on behalf of and registered in the name of the Depositary or its nominee, that bears the Global Warrant Legend and that has the "Schedule of Decreases of Warrants" attached thereto.

"**Global Warrant Legend**" means the legend set forth in Section 2.4(a).

"**Law**" means any federal, state, local, foreign or provincial law, statute, ordinance, rule, regulation, judgment, order, injunction, decree or agency requirement having the force of law or any undertaking to or agreement with any governmental authority, including common law.

"**Liquidity Event**" means any transaction or series of related transactions that results in (a) a merger, consolidation or combination involving the Company, (b) the sale or exchange of all or substantially all of the equity interests of the Company to one or more third parties (whether by merger, sale, recapitalization, consolidation, combination or otherwise) or (c) the sale, directly or indirectly, by the Company of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole; provided that, in each case, the closing or other consummation of such Liquidity Event occurs on or prior to February 9, 2026; provided further, however that notwithstanding the foregoing, no Exempt Transaction shall be a Liquidity Event.

"**Management Incentive Plan**" has the meaning set forth in the Plan.

"**National Securities Exchange**" means The New York Stock Exchange, The Nasdaq Global Select Market or The Nasdaq Global Market.

"**Person**" means an individual, partnership, firm, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

"**Plan**" has the meaning set forth in the Recitals.

"**Plan Effective Date**" means the effective date of the Plan as defined therein.

"**Recipient**" has the meaning set forth in Section 3.2(c) hereof.

"**Record Date**" means (i) with respect to any dividend, distribution, recapitalization, reclassification, split, reverse split, reorganization, consolidation, merger or other transaction or event in which the holders of Common Shares have the right to receive any cash, Securities or other property or in which Common Shares (or another applicable Security) are exchanged for or converted into, any combination of, cash, Securities or other property, the date fixed for determination of holders of Common Shares entitled to receive such cash, Securities or other property or participate in such exchange or conversion (whether such date is fixed by the Board or by statute, contract or otherwise) or (ii) with respect to any redemption or repurchase of Common Shares or Convertible Securities by the Company, the date on which the Company agrees to such redemption or repurchase (if such date precedes the date on which the Company effects such redemption or repurchase).

"**Reference Property**" has the meaning set forth in Section 4.6(a) hereof.

"**Reorganization Event**" has the meaning set forth in Section 4.6(a) hereof.

"**Required Warrantholders**" means Warrantholders holding at least 50.01% of the then-outstanding Warrants.

"**Securities**" means (i) any capital stock (whether common or preferred, voting or nonvoting), partnership, membership or limited liability company interest or other equity or voting interest, (ii) any right, option, warrant (including the Warrants) or other security or evidence of indebtedness convertible into, or exercisable or exchangeable for, directly or indirectly, any interest described in clause (i) (each, a "Specified Convertible Security"), (iii) any notes, bonds, debentures, trust receipts and other obligations, instruments or evidences of indebtedness, and (iv) any other "securities," as such term is defined or determined under the Securities Act.

"**Securities Act**" means the Securities Act of 1933, as amended from time to time, and the related rules and regulations promulgated thereunder.

"**Settlement Date**" means, in respect of a Warrant that is exercised hereunder, (a) in all circumstances other than a Cashless Settlement where Fair Market Value has been determined by the Board pursuant to clause (vi) of the definition thereof, the third Business Day immediately following the Exercise Date for such Warrant, and (b) in the event of a Cashless Settlement where Fair Market Value has been determined by the Board pursuant to clause (iv) of the definition thereof, the third Business Day immediately following receipt by the Exercising Owner of notice of such Fair Market Value.

"**Specified Convertible Security**" has the meaning set forth in the definition of Securities.

"**Subsidiary**" means, as to any Person, any corporation, partnership, limited liability company or other organization, whether incorporated or unincorporated, of which at least a majority of the Securities or other interests having by their terms voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly beneficially owned or controlled by such party or by any one or more of its subsidiaries, or by such party and one or more of its subsidiaries.

"**Trading Day**" means each Monday, Tuesday, Wednesday, Thursday and Friday, other than any day on which Securities are not traded on the applicable securities exchange.

"**Transfer**" means, with respect to any Warrant, to directly or indirectly (whether by act, omission or operation of Law), sell, exchange, transfer, hypothecate, negotiate, gift, convey in trust, pledge, assign, encumber, or otherwise dispose of, or by adjudication of a Person as bankrupt, by assignment for the benefit of creditors, by attachment, levy or other seizure by any creditor (whether or not pursuant to judicial process), or by passage or distribution of Warrants under judicial order or legal process, carry out or permit the transfer or other disposition of, all of such Warrant.

"**Unit of Reference Property**" has the meaning set forth in Section 4.6(a) hereof.

"**VWAP**" means, for any Trading Day, the price for Securities (including Common Shares) determined by the daily volume-weighted average price per unit of such Securities for such Trading Day on the trading market on which such Securities are then listed or quoted, in each case, for the regular trading session (including any extensions thereof, without regard to pre-open or after hours trading outside of such regular trading session) as reported on a National Securities Exchange, or if such Securities are listed or quoted on an Alternative Securities Exchange, as reported by the Alternative Securities Exchange on which such Securities are then listed or quoted, whichever is applicable, as published by Bloomberg at 4:15 p.m., New York City time (or 15 minutes following the end of any extension of the regular trading session), on such Trading Day.

"**Warrant**" or "**Warrants**" means those certain warrants of the Company to purchase the Warrant Shares and which expire at the Expiration Time and are issued pursuant to this Warrant Agreement with the terms, conditions and rights set forth therein. Each Warrant shall entitle the Warrantholder of the Warrant or the Warrant Certificate evidencing such Warrant upon exercise to purchase one Common Share at the Exercise Price, subject to adjustment pursuant to Article 4, issued hereunder.

"**Warrant Agent**" has the meaning set forth in the Preamble.

"**Warrant Agreement**" has the meaning set forth in the Preamble.

"**Warrant Certificates**" means those certain warrant certificates evidencing the Warrants, substantially in the form of Exhibit A attached hereto, except that, in the case of a Definitive Warrant Certificate, such Warrant Certificate shall not bear the Global Warrant Legend and shall not have a "Schedule of Decreases of Warrants" attached thereto.

"**Warrant Register**" has the meaning set forth in Section 2.5(b).

"**Warrant Shares**" means each Common Share issuable upon the exercise of the Warrants.

"**Warrantholder**" means any Person in whose name at the time any Warrant or Warrant Certificate is registered upon the Warrant Register and, when used with respect to any Warrant Certificate, the Person in whose name such Warrant Certificate is registered in the Warrant Register.

ARTICLE 2

WARRANT CERTIFICATES

Section 2.1 Original Issuance of Warrants.

(a) On the Closing Date, one or more Global Warrant Certificates evidencing the Warrants equal to 12,345,679 Class B Warrants (the "**Class B Warrants**"), (each such Warrant to be subject to adjustment from time to time as described herein), in accordance with the terms of this Warrant Agreement and the Plan, shall be executed by the Company and delivered to the Warrant Agent for countersignature, along with an Authentication Order, and the Warrant Agent shall countersign and deliver such Global Warrant Certificates for issuance to the Depositary, or its custodian, for crediting to the

accounts of its participants for the benefit of the Warrantholders, as the Beneficial Owners of the Warrants, pursuant to the Applicable Procedures of the Depositary on the Closing Date. Each Warrant Certificate shall evidence the number of Warrants specified therein, and each Warrant evidenced thereby shall represent the right, subject to the provisions contained herein and therein, to purchase one Common Share, subject to adjustment as provided in Article 4.

(b) Each Warrant shall be exercisable for one fully paid and nonassessable Common Share (subject to adjustment under Article 4) upon payment of the applicable Exercise Price for each such Common Share so receivable upon exercise of such Warrant and compliance with the procedures set forth in this Warrant Agreement. On the Closing Date, the Warrant Agent shall register all of the Warrants in the Warrant Register. The Warrants shall be dated as of the Closing Date and, subject to the terms hereof, shall be the only Warrants issued or outstanding under this Warrant Agreement as of the Closing Date.

(c) All Warrants issued under this Warrant Agreement shall in all respects be equally and ratably entitled to their respective benefits under this Warrant Agreement, without preference, priority, or distinction on account of the actual time of the issuance and authentication or any other terms thereof. Each Warrant shall be, and shall remain, subject to the provisions of this Warrant Agreement until such time as such Warrant shall have been duly exercised or shall have expired or been canceled in accordance with the terms hereof. Each Warrantholder shall be bound by all of the terms and provisions of this Warrant Agreement as fully and effectively as if such Warrantholder had signed the same.

Section 2.2 Form of Warrants. The Warrant Certificates evidencing the Warrants shall be in registered form only and substantially in the form attached hereto as Exhibit A, shall be dated the date on which countersigned by the Warrant Agent, shall have such insertions as are appropriate or required or permitted by this Warrant Agreement and may have such letters, numbers or other marks of identification and such legends and endorsements typed, stamped, printed, lithographed or engraved thereon as the officers of the Company executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Warrant Agreement, or as may be required to comply with any Law or with any rule or regulation pursuant thereto or with any rule or regulation of any securities exchange on which the Warrants may be listed, or to conform to usage.

Section 2.3 Execution and Delivery of Warrant Certificates.

(a) Warrant Certificates evidencing the Warrants which may be countersigned and delivered under this Warrant Agreement are limited to Warrant Certificates evidencing the Warrants except for Warrant Certificates countersigned and delivered upon registration of Transfer of, or in exchange for, or in lieu of, one or more previously countersigned Warrant Certificates pursuant to Section 2.4, Section 2.5, Section 2.8, and Section 3.2(b).

(b) The Warrant Agent is hereby authorized to countersign and deliver Warrant Certificates as required by Section 2.1, Section 2.4, Section 2.5, Section 2.8, and Section 3.2(b).

(c) The Warrant Certificates shall be executed in the corporate name and on behalf of the Company by the Chief Executive Officer or the Chief Financial Officer of the Company under corporate seal reproduced thereon and attested to by the Secretary or one of the Assistant Secretaries of the Company, either manually or by facsimile signature printed thereon. The Warrant Certificates shall be manually countersigned by the Warrant Agent and shall not be valid for any purpose unless so countersigned. In case any officer of the Company whose signature shall have been placed upon any of the Warrant Certificates shall cease to be such officer of the Company before countersignature by the Warrant Agent and issue and delivery thereof, such Warrant Certificates may, nevertheless, be countersigned by the Warrant Agent and issued and delivered with the same force and effect as though such person had not ceased to be such officer of the Company, and any Warrant Certificate may be signed on behalf of the Company by such person as, at the actual date of the execution of such Warrant Certificate, shall be a proper officer of the Company, although at the date of the execution of this Warrant Agreement any such person was not such officer.

Section 2.4 Global Warrant Certificates.

(a) Any Global Warrant Certificate shall bear the legend substantially in the form set forth in Exhibit A hereto (the "**Global Warrant Legend**").

(b) So long as a Global Warrant Certificate is registered in the name of the Depositary or its nominee, members of, or participants in, the Depositary ("**Agent Members**") shall have no rights under this Warrant Agreement with respect to the Warrants evidenced by such Global Warrant Certificate held on their behalf by the Depositary or its custodian, and the Depositary may be treated by the Company, the Warrant Agent and any agent of the Company or the Warrant Agent as the absolute owner of such Warrants, and as the sole Warrantholder of such Warrant Certificate, for all purposes. Accordingly, any such Agent Member's beneficial interest in such Warrants will be shown only on, and the Transfer of such interest shall be effected only through, records maintained by the Depositary or its nominee or its Agent Members, and neither the Company nor the Warrant Agent shall have any responsibility or liability with respect to such records maintained by the Depositary or its nominee or its Agent Members. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Warrant Agent or any agent of the Company or the Warrant Agent from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and its Agent Members, the operation of customary practices governing the exercise of the rights of a holder of any security.

(c) Any Beneficial Owner of Warrants evidenced by a Global Warrant Certificate registered in the name of the Depositary or its nominee shall, by acceptance of such beneficial interest, agree that Transfers of beneficial interests in the Warrants evidenced by such Global Warrant Certificate may be effected only through the book-entry system maintained by the Depositary as the Warrantholder of such Global Warrant

Certificate (or its agent), and that ownership of a beneficial interest in Warrants evidenced thereby shall be reflected solely in such book-entry form.

(d) Transfers of a Global Warrant Certificate registered in the name of the Depositary or its nominee shall be limited to Transfers in whole, and not in part, to the Depositary, its successors, and their respective nominees except as set forth in Section 2.4(e). Interests of Beneficial Owners in a Global Warrant Certificate registered in the name of the Depositary or its nominee shall be Transferred in accordance with the Applicable Procedures of the Depositary.

(e) A Global Warrant Certificate registered in the name of the Depositary or its nominee shall be exchanged for Definitive Warrant Certificates only if the Depositary (i) has notified the Company that it is unwilling or unable to continue as or ceases to be a clearing agency registered under Section 17A of the Exchange Act and (ii) a successor to the Depositary registered as a clearing agency under Section 17A of the Exchange Act is not able to be appointed by the Company within 90 days or the Depositary is at any time unwilling or unable to continue as Depositary and a successor to the Depositary is not able to be appointed by the Company within 90 days. In any such event, a Global Warrant Certificate registered in the name of the Depositary or its nominee shall be surrendered to the Warrant Agent for cancellation in accordance with Section 3.12, and the Company shall execute, and the Warrant Agent shall countersign and deliver, to each Beneficial Owner identified by the Depositary, in exchange for such Beneficial Owner's beneficial interest in such Global Warrant Certificate, Definitive Warrant Certificates evidencing, in the aggregate, the number of Warrants theretofore represented by such Global Warrant Certificate with respect to such Beneficial Owner's respective beneficial interest. Any Definitive Warrant Certificate delivered in exchange for an interest in a Global Warrant Certificate pursuant to this Section 2.4(e) shall not bear the Global Warrant Legend. Interests in any Global Warrant Certificate may not be exchanged for Definitive Warrant Certificates other than as provided in this Section 2.4(e).

(f) The Warrantholder of a Global Warrant Certificate registered in the name of the Depositary or its nominee may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Warrantholder of a Warrant Certificate is entitled to take under this Warrant Agreement or such Global Warrant Certificate.

(g) Each Global Warrant Certificate will evidence such of the outstanding Warrants as will be specified therein and each shall provide that it evidences the aggregate number of outstanding Warrants from time to time endorsed thereon and that the aggregate number of outstanding Warrants evidenced thereby may from time to time be reduced, to reflect exercises or expirations. Any endorsement of a Global Warrant Certificate to reflect the amount of any decrease in the aggregate number of outstanding Warrants evidenced thereby will be made by the Warrant Agent (i) in the case of an exercise, in accordance with the Applicable Procedures as required by Section 3.2(b) or (ii) in the case of an expiration, in accordance with Section 2.6.

(h) The Company initially appoints DTC to act as Depositary with respect to the Global Warrant Certificates.

(i) Every Warrant Certificate authenticated and delivered in exchange for, or in lieu of, a Global Warrant Certificate or any portion thereof, pursuant to this Section 2.4, Section 2.5(a), or Section 2.8, shall be authenticated and delivered in the form of, and shall be, a Global Warrant Certificate, and a Global Warrant Certificate may not be exchanged for a Definitive Warrant Certificate, in each case, other than as provided in Section 2.4(e). Whenever any provision herein refers to issuance by the Company and countersignature and delivery by the Warrant Agent of a new Warrant Certificate in exchange for the portion of a surrendered Warrant Certificate that has not been exercised, in lieu of the surrender of any Global Warrant Certificate and the issuance, countersignature and delivery of a new Global Warrant Certificate in exchange therefor, the Warrant Agent may endorse such Global Warrant Certificate to reflect a reduction in the number of Warrants evidenced thereby in the amount of Warrants so evidenced that have been so exercised.

(j) Beneficial interests in any Global Warrant Certificate may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Global Warrant Certificate in accordance with the Applicable Procedures.

(k) At such time as all Warrants evidenced by a particular Global Warrant Certificate have been exercised or expired in whole and not in part, such Global Warrant Certificate shall, if not in custody of the Warrant Agent, be surrendered to or retained by the Warrant Agent for cancellation in accordance with Section 3.12.

Section 2.5 Registration, Transfer, Exchange and Substitution.

(a) The Warrant Agent will maintain an office (the "**Corporate Agency Office**") in the United States of America, where Warrant Certificates may be surrendered for registration of Transfer or exchange and where Warrant Certificates may be surrendered for exercise of Warrants evidenced thereby, which office is EQ Shareowner Services, P.O. Box 64874, St. Paul, MN 55164 on the Closing Date. The Warrant Agent will give prompt written notice to all Warrantholders of any change in the location of such office.

(b) The Warrant Certificates evidencing the Warrants shall be issued in registered form only. The Company shall cause to be kept at the office of the Warrant Agent designated for such purpose a warrant register (the "**Warrant Register**") in which, subject to such reasonable regulations as the Warrant Agent may prescribe and such regulations as may be prescribed by Law, the Company shall provide for the registration of Warrant Certificates and of Transfers or exchanges of Warrant Certificates as herein provided.

(c) Upon surrender for registration of Transfer of any Warrant Certificate at the Corporate Agency Office, the Company shall execute, and the Warrant Agent shall countersign and deliver, in the name of the designated Transferee or Transferees, one or more new Warrant Certificates evidencing a like aggregate number of Warrants.

(d) At the option of the Warrantholder, Warrant Certificates may be exchanged at the office of the Warrant Agent upon payment of the charges hereinafter provided for other Warrant Certificates evidencing a like aggregate number of Warrants. Whenever any Warrant Certificates are so surrendered for exchange, the Company shall

execute, and the Warrant Agent shall countersign and deliver, the Warrant Certificates of the same tenor and evidencing the same number of Warrants as evidenced by the Warrant Certificates surrendered by the Warrantholder making the exchange.

(e) All Warrant Certificates issued upon any registration of Transfer or exchange of, or in lieu of, Warrant Certificates shall be the valid obligations of the Company, evidencing the same obligations, and entitled to the same benefits under this Warrant Agreement, as the Warrant Certificates surrendered for such registration of Transfer or exchange or substitution.

(f) Every Warrant Certificate surrendered for registration of Transfer or exchange shall (if so required by the Company or the Warrant Agent) be duly endorsed, or be accompanied by a written instrument of Transfer in form satisfactory to the Company and the Warrant Agent, duly executed by the Warrantholder thereof or his attorney duly authorized in writing.

(g) No service charge shall be made for any registration of Transfer or exchange of Warrant Certificates; provided, however, to the extent provided in the proviso to Section 3.11, the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of Transfer or exchange of Warrant Certificates.

(h) The Warrant Agent shall, upon request of the Company from time to time, deliver to the Company such reports of registered ownership of the Warrants and such records of transactions with respect to the Warrants and the Common Shares as the Company may request. The Warrant Agent shall also make available to the Company for inspection by the Company's agents or employees, from time to time as the Company may request, such original books of accounts and records maintained by the Warrant Agent in connection with the issuance and exercise of Warrants hereunder, such inspections to occur at the Corporate Agency Office during normal business hours.

(i) The Warrant Agent shall keep copies of this Warrant Agreement and any notices given to Warrantholders hereunder available for inspection by the Warrantholders during normal business hours at the Corporate Agency Office. The Company shall supply the Warrant Agent from time to time with such numbers of copies of this Warrant Agreement as the Warrant Agency may request.

(j) Transfers of the Warrant Certificates evidencing Warrants shall be subject only to the terms of this Warrant Agreement and applicable securities Laws. The Warrant Agent shall register the Transfer, from time to time, of any outstanding Warrant Certificates evidencing Warrants upon the Warrant Register, upon delivery of a duly executed assignment, in the form attached hereto as Exhibit A, and accompanied by appropriate instructions for Transfer. No such Transfer shall be effected until, and the Transferee shall succeed to the rights of the holder thereof only upon, final acceptance and registration of the Transfer in the Warrant Register by the Warrant Agent. Prior to the registration of any Transfer of a Warrant Certificate evidencing a Warrant as provided herein, the Company, the Warrant Agent, and any agent of the Company or the Warrant Agent may treat the Person in whose name such Warrant Certificate is registered as the owner thereof and of the Warrants evidenced thereby for all purposes, notwithstanding

any notice to the contrary. Subject to Section 3.11, no service charge, tax or governmental payment shall be required of any Transferor or Transferee in connection with any such Transfer or registration of Transfer. A party requesting Transfer of a Warrant Certificate evidencing a Warrant must provide reasonable and customary evidence of authority if requested by the Warrant Agent.

Section 2.6 Cancellation of the Warrants. Any Warrants outstanding as of the Expiration Time shall be automatically cancelled without any further action on the part of the Warrant Agent or any other Person.

Section 2.7 CUSIP Numbers. In issuing the Warrants, the Company will use a "CUSIP" number. The Warrant Agent will use CUSIP numbers in notices to Warrantholders. The Company will promptly notify the Warrant Agent in writing of any change in the CUSIP numbers.

Section 2.8 Loss or Mutilation.

(a) If (i) any mutilated Warrant Certificate is surrendered to the Warrant Agent or (ii) both (A) there shall be delivered to the Company and the Warrant Agent (x) a claim by a Warrantholder as to the destruction, loss or wrongful taking of any Warrant Certificate of such Warrantholder and a request thereby for a new replacement Warrant Certificate, and (y) such indemnity bond as may be required by them to save each of them and any agent of either of them harmless and (B) such other reasonable requirements as may be imposed by the Company as permitted by Section 8-405 of the Uniform Commercial Code have been satisfied, then, in the absence of notice to the Company or the Warrant Agent that such Warrant Certificate has been acquired by a "protected purchaser" within the meaning of Section 8-405 of the Uniform Commercial Code, the Company shall execute and upon its written request the Warrant Agent shall countersign and deliver to the registered Warrantholder of the lost, wrongfully taken, destroyed or mutilated Warrant Certificate, in exchange therefore or in lieu thereof, a new Warrant Certificate of the same tenor and for a like aggregate number of Warrants and of the same class.

(b) Upon the issuance of any new Warrant Certificate under this Section 2.8, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and other expenses (including the fees and expenses of the Warrant Agent and of counsel to the Company) in connection therewith.

(c) Every new Warrant Certificate executed and delivered pursuant to this Section 2.8 in lieu of any lost, wrongfully taken or destroyed Warrant Certificate shall constitute an additional contractual obligation of the Company, whether or not the allegedly lost, wrongfully taken or destroyed Warrant Certificate shall be at any time enforceable by anyone, and shall be entitled to the benefits of this Warrant Agreement equally and proportionately with any and all other Warrant Certificates duly executed and delivered hereunder.

(d) The provisions of this Section 2.8 are exclusive and shall preclude (to the extent lawful) all other rights or remedies with respect to the replacement of mutilated, lost, wrongfully taken, or destroyed Warrant Certificates.

ARTICLE 3

EXERCISE AND SETTLEMENT OF WARRANTS

Section 3.1 Right to Acquire Common Shares Upon Exercise. Each Warrant Certificate shall, when countersigned by the Warrant Agent, entitle the Warrantholder thereof, subject to the provisions thereof and of this Warrant Agreement, to acquire from the Company, for each Warrant evidenced thereby one Common Share at the Exercise Price, subject to adjustment as provided in this Warrant Agreement. The Exercise Price, and the number of Common Shares obtainable upon exercise of each Warrant, shall be adjusted from time to time as required by Article 4.

Section 3.2 Exercise Procedures for Warrants.

(a) In order to exercise all or any of the Warrants represented by a Warrant Certificate, the Warrantholder thereof must:

(i) (x) in the case of a Global Warrant Certificate, provide to the Warrant Agent at the Corporate Agency Office a duly completed and executed Exercise Notice as to the number of Warrants being exercised and, if applicable, whether Cashless Settlement is being elected with respect thereto, and deliver such Warrants by book-entry transfer through the facilities of the Depositary, to the Warrant Agent in accordance with the Applicable Procedures and otherwise comply with the Applicable Procedures in respect of the exercise of such Warrants or (y) in the case of a Definitive Warrant Certificate, at the Corporate Agency Office (A) surrender to the Warrant Agent the Warrant Certificate evidencing such Warrants and (B) deliver to the Warrant Agent a duly completed and executed Exercise Notice as to the Warrantholder's election to exercise the number of the Warrants specified therein and, if applicable, whether Cashless Settlement is being elected with respect thereto, duly executed by such Warrantholder; and

(ii) pay to the Warrant Agent an amount equal to (x) those applicable taxes and charges required to be paid by the Warrantholder, if any, pursuant to Section 3.11 (with all other taxes and charges being the responsibility of the Company pursuant to the first clause of Section 3.11) prior to, or concurrently with, exercise of such Warrants and (y) except in the case of a Cashless Settlement, the aggregate of the Exercise Price in respect of each Common Share into which such Warrants are exercisable, in case of (x) and (y), by wire transfer in immediately available funds, to the account (657601568) of the Company at J P Morgan Chase Bank, N.A. or such other account of the Company at such banking institution as the Company shall have given notice to the Warrant Agent and such Warrantholder in accordance with Section 6.14.

(b) If fewer than all the Warrants represented by a Warrant Certificate are exercised, (i) in the case of exercise of Warrants evidenced by a Global Warrant Certificate, the Warrant Agent shall endorse the "Schedule of Decreases of Warrants" attached to such Global Warrant Certificate to reflect the Warrants being exercised and (ii) in the case of exercise of Warrants evidenced by a Definitive Warrant Certificate, such Definitive Warrant Certificate shall be surrendered and a new Definitive Warrant Certificate of the same tenor and for the number of Warrants which were not exercised shall be executed by the Company. The Warrant Agent shall countersign the new Definitive Warrant Certificate, registered in such name or names, subject to the provisions of Section 2.5 regarding registration of Transfer and Section 3.11 regarding payment of governmental charges in respect thereof, as may be directed in writing by the Warrantholder, and shall deliver the new Definitive Warrant Certificate to the Person or Persons in whose name such new Warrant Certificate is so registered. The Company, whenever required by the Warrant Agent, will supply the Warrant Agent with Definitive Warrant Certificates duly executed on behalf of the Company for such purpose.

(c) Upon due exercise of Warrants evidenced by any Warrant Certificate in conformity with the foregoing provisions of Section 3.2(a), the Warrant Agent shall, when actions specified in Section 3.2(a)(i) have been effected and any payment specified in Section 3.2(a)(ii) is received, deliver to the Company the Exercise Notice received pursuant to Section 3.2(a)(i), deliver or deposit all funds received as instructed in writing by the Company and advise the Company by telephone at the end of such day of the amount of funds so deposited to its account. The Company shall thereupon, as promptly as practicable, and in any event within five Business Days after the Exercise Date referred to below, (i) determine the number of Common Shares issuable pursuant to exercise of such Warrants pursuant to Section 3.3 or, if Cashless Settlement applies, Section 3.4 and (ii) (x) in the case of exercise of Warrants evidenced by a Global Warrant Certificate, deliver or cause to be delivered to the Recipient (as defined below) in accordance with the Applicable Procedures Common Shares in book-entry form to be so held through the facilities of DTC in an amount equal to, or, if the Common Shares may not then be held in book-entry form through the facilities of DTC, duly executed certificates representing, or (y) in the case of exercise of Warrants evidenced by Definitive Warrant Certificates, deliver or cause to be delivered to the Recipient (as defined below) Common Shares in book-entry form on the Common Share registrar maintained by the Warrant Agent for such purpose, or, at the election of the Warrantholder, duly executed certificates representing, in case of (x) and (y), the aggregate number of Common Shares issuable upon such exercise (based upon the aggregate number of Warrants so exercised), as so determined, together with an amount in cash in lieu of any fractional share(s) pursuant to Section 3.6. The Common Shares in book-entry form or certificate or certificates representing Common Shares so delivered shall be, to the extent possible, in such denomination or denominations as such Warrantholder shall request in the applicable notice of exercise and shall be registered or otherwise placed in the name of, and delivered to, the Warrantholder or, subject to Section 3.11, such other Person as shall be designated by the Warrantholder in such notice (the Warrantholder or such other Person being referred to herein as the "**Recipient**").

(d) The date on which all of the requirements for exercise set forth in this Section 3.2 in respect of a Warrant have been satisfied is the "**Exercise Date**" with respect to such Warrant (subject to Section 3.2(h)).

(e) Subject to Section 3.2(g) and Section 3.2(h), any exercise of a Warrant pursuant to the terms of this Warrant Agreement shall be irrevocable and enforceable in accordance with its terms.

(f) All funds received by the Warrant Agent under this Warrant Agreement that are to be distributed or applied by the Warrant Agent in the performance of services in accordance with this Warrant Agreement (the "**Funds**") shall be held by the Warrant Agent as agent for the Company and deposited in one or more bank accounts to be maintained by the Warrant Agent in its name as agent for the Company (the "**Funds Account**"). Until paid pursuant to the terms of this Warrant Agreement, the Warrant Agent will hold the Funds through the Funds Account in deposit accounts of commercial banks with Tier 1 capital exceeding $1 billion or with an average rating above investment grade by S&P (LT Local Issuer Credit Rating), Moody's (Long Term Rating) and Fitch Ratings, Inc. (LT Issuer Default Rating), each as reported by Bloomberg Finance L.P. The Warrant Agent shall have no responsibility or liability for any diminution of the Funds that may result from any deposit made by the Warrant Agent in accordance with this paragraph, including any losses resulting from a default by any bank, financial institution or other third party. The Warrant Agent may from time to time receive interest, dividends or other earnings in connection with such deposits.

(g) Prior to the delivery of any Common Shares upon exercise of a Warrant, the Company shall be obligated to comply with all applicable Laws which require action to be taken by the Company in connection with such delivery. The Company shall assist and cooperate with any Exercising Owner that is required to make any governmental filings or obtain any governmental approvals prior to or in connection with receipt of Common Shares upon any exercise of a Warrant (including, without limitation, making any filings required to be made by the Company), and any exercise of a Warrant by a Warrantholder may be made contingent by it upon the making of any such filing and the receipt of any such approval.

(h) Notwithstanding any other provision of this Warrant Agreement, if the exercise of any Warrant is to be made in connection with a Liquidity Event, such exercise may, at the election of the Exercising Owner, be conditioned upon consummation of such transaction or event, in which case such exercise shall not be deemed effective until the consummation of such transaction or event.

(i) The Warrant Agent shall forward funds deposited in the Funds Account in a given week by the fifth Business Day of the following week by wire transfer to an account designated by the Company.

(j) In the case of Cash Settlement, payment of the applicable aggregate Exercise Price by or on behalf of an Exercising Owner upon exercise of Warrants shall be by federal wire or other immediately available funds payable to the account maintained by the Warrant Agent in its name as agent for the Company. The Warrant Agent shall

provide an exercising Warrantholder, upon request, with the appropriate payment instructions.

Section 3.3 Shares Issuable. The number of Common Shares "obtainable upon exercise" of Warrants at any time shall be the number of Common Shares into which such Warrants are then exercisable. The number of Common Shares "into which each Warrant is exercisable" shall be one share, subject to adjustment as provided in Article 4.

Section 3.4 Settlement of Warrants.

(a) Warrants may be exercised using Cash Settlement or Cashless Settlement in accordance with this Article 3 at any time prior to the Expiration Time, either in full or from time to time in part.

(b) Cash Settlement shall apply to each Warrant unless the Exercising Owner elects for Cashless Settlement to apply upon exercise of such Warrant. Such election shall be made in the Exercise Notice for such Warrant.

(c) If Cash Settlement applies to the exercise of a Warrant, upon the proper and valid exercise thereof by an Exercising Owner, the Company shall cause to be delivered to the Exercising Owner, the Cash Settlement Share Amount on the Settlement Date.

(d) If Cashless Settlement applies to the exercise of a Warrant:

(i) The Warrantholder must (A) expressly state in its Exercise Notice its desire to effect a Cashless Settlement and (B) must provide the Exercise Notice to the Warrant Agent at the Corporate Agency Office.

(ii) Upon the proper and valid exercise thereof by an Exercising Owner, the Company shall cause to be delivered to the Exercising Owner, the Cashless Settlement Share Amount on the Settlement Date, together with cash in lieu of any fractional Common Share, as provided in Section 3.6.

Section 3.5 Delivery of Common Shares.

(a) In connection with the exercise of Warrants, the Warrant Agent shall:

(i) examine all Exercise Notices and all other documents delivered to it to ascertain whether, on their face, such Exercise Notices and any such other documents have been executed and completed in accordance with their terms;

(ii) where an Exercise Notice or other document appears on its face to have been improperly completed or executed or some other irregularity in connection with the exercise of the Warrant exists, endeavor to inform the appropriate parties (including the Person submitting such instrument) of the need for fulfillment of all requirements, specifying those requirements which appear to be unfulfilled;

(iii) inform the Company of and cooperate with and assist the Company in resolving any reconciliation problems between the Exercise Notices received and delivery of Warrants to the Warrant Agent's account;

(iv) advise the Company with respect to an exercise, as promptly as practicable following the satisfaction of each of the applicable procedures for exercise set forth in Section 3.2(a) of (v) the receipt of such Exercise Notice and the number of Warrants exercised in accordance with the terms and conditions of this Warrant Agreement, (w) the number of Common Shares to be delivered by the Company, (x) the instructions with respect to issuance of the Common Shares, (y) the number of Persons who will become holders of record of the Company (who were not previously holders of record) as a result of receiving Common Shares upon exercise of the Warrants and (z) such other information as the Company shall reasonably require;

(v) promptly deposit in the Funds Account all Funds received in payment of the applicable Exercise Price in connection with any Cash Settlement of Warrants;

(vi) provide to the Company, upon the Company's request, the number of Warrants previously exercised, the number of Common Shares issued in connection with such exercises and the number of remaining outstanding Warrants; and

(vii) provide to the Company, upon the Company's request, any Exercise Notices delivered pursuant to Section 3.2(a) and any documents delivered pursuant to Section 3.5(b)(i)(B).

(b) With respect to each properly exercised Warrant evidenced by any Warrant Certificate in accordance with this Warrant Agreement, (i) (x) in the case of exercise of Warrants evidenced by a Global Warrant Certificate, the Company shall deliver or cause to be delivered to the Recipient in accordance with the Applicable Procedures Common Shares in book-entry form to be so held through the facilities of DTC in an amount equal to, or, if the Common Shares may not then be held in book-entry form through the facilities of DTC, duly executed certificates representing, or (y) in the case of exercise of Warrants evidenced by Definitive Warrant Certificates, deliver or cause to be delivered to the Recipient Common Shares in book-entry form on the Common Share registrar maintained by the Warrant Agent for such purpose, or, at the election of the Warrantholder, duly executed certificates representing, in case of (x) or (y), the aggregate number of Common Shares issuable upon such exercise (based upon the aggregate number of Warrants so exercised) (A) unless clause (B) is applicable, for the benefit and in the name of the Warrantholder or (B) for the benefit and in the name of such Person (other than the Warrantholder) designated by the Warrantholder submitting the applicable Exercise Notice; and (ii) the Warrant Agent shall deliver such Common Shares to such Person pursuant to clause (i)(A) or (i)(B), as applicable. The Person on whose behalf and in whose name any Common Shares are registered shall for all purposes be deemed to have become the holder of record of such Common Shares as of the Close of Business on the applicable Exercise Date. The Company covenants that all Common Shares which may be issued upon exercise of Warrants will be, upon payment

of the Exercise Price and issuance thereof, fully paid and nonassessable, free of preemptive rights and (except as specified in the proviso to Section 3.11) free from all taxes, liens, charges and security interests with respect to the issuance thereof.

(c) Promptly after the Warrant Agent has taken the action required by this Section 3.5 (or at such later time as may be mutually agreeable to the Company and the Warrant Agent), the Warrant Agent shall account to the Company with respect to the consummation of any exercise of any Warrants.

Section 3.6 No Fractional Common Shares to Be Issued.

(a) Notwithstanding anything to the contrary in this Warrant Agreement, the Company shall not be required to issue any fraction of a Common Share upon exercise of any Warrants.

(b) If any fraction of a Common Share would, except for the provisions of this Section 3.6, be issuable on the exercise of any Warrants, the Company shall make a cash payment in lieu of issuing such fractional Common Share equal to the Fair Market Value of one Common Share, as determined on the date the Warrant is presented for exercise, multiplied by such fraction, rounded to the nearest whole cent. All Warrants exercised by a Warrantholder on the same Exercise Date shall be aggregated for purposes of determining the number of Common Shares to be delivered pursuant to Section 3.5(b).

(c) Each Warrantholder, by its acceptance of an interest in a Warrant, expressly waives its right to any fraction of a Common Share upon its exercise of such Warrant.

Section 3.7 Acquisition of Warrants by Company. The Company shall have the right, except as limited by Law, to purchase or otherwise to acquire one or more Warrants at such times, in such manner and for such consideration as agreed by the Company and the applicable Warrantholder.

Section 3.8 Validity of Exercise. All questions as to the validity, form and sufficiency (including time of receipt) of a Warrant exercise shall be determined by the Company in good faith in accordance with the terms of this Warrant Agreement and the Warrants, which determination, absent manifest error, shall be final and binding with respect to the Warrant Agent. The Warrant Agent shall incur no liability for or in respect of and, except to the extent such liability arises from the Warrant Agent's gross negligence, willful misconduct, actual fraud or material breach of this Warrant Agreement (as determined by a court of competent jurisdiction in a final non-appealable judgment) and shall be indemnified and held harmless by the Company for acting or refraining from acting upon, or as a result of, such determination by the Company. The Company reserves the absolute right to waive any of the conditions to the exercise of Warrants or defects in Exercise Notices with regard to any particular exercise of Warrants.

Section 3.9 Certain Calculations.

(a) The Warrant Agent shall be responsible for performing all calculations, except for the case of Cashless Settlements, required in connection with the exercise and settlement of the Warrants as described in this Article 3. In connection therewith, the

Warrant Agent shall provide prompt written notice to the Company, in accordance with Section 3.5(a)(iv), of the number of Common Shares deliverable upon exercise and settlement of Warrants. The Company shall be responsible for all calculations and determinations required in connection with any Cashless Settlements and shall provide written notification to the Warrant Agent of the Cashless Settlement Share Amount to be issued on the Settlement Date for any Cashless Settlement. The Warrant Agent shall not be responsible for performing the calculations set forth in Article 4.

(b) The Warrant Agent shall not be accountable with respect to the validity or value of any Common Shares that may at any time be issued or delivered upon the exercise of any Warrant, and it makes no representation with respect thereto. The Warrant Agent shall not be responsible, to the extent not arising from the Warrant Agent's gross negligence, willful misconduct or actual fraud (as determined by a court of competent jurisdiction in a final non-appealable judgment), for any failure of the Company to issue, transfer or deliver any Common Shares, or to comply materially with any of the covenants of the Company contained in this Article 3 of this Warrant Agreement.

Section 3.10 Reservation and Listing of Shares. The Company will at all times reserve and keep available, out of its authorized but unissued Common Shares, solely for the purpose of providing for the exercise of the Warrants, the aggregate number of Common Shares then issuable upon exercise of the Warrants at any time and shall take all action required to increase the authorized number of Common Shares if at any time there shall be insufficient authorized but unissued Common Shares to permit such reservation or to permit the exercise of a Warrant (an "**Authorized Share Failure**"). Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than 180 days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its stockholders for the approval of an increase in the number of authorized Common Shares. In connection with such meeting, the Company shall use its best efforts to solicit its stockholders' approval of such increase in authorized Common Shares and to cause its Board to recommend to the stockholders that they approve such proposal. The Company shall instruct the transfer agent to deliver to the Warrant Agent, upon written request from the Warrant Agent, stock certificates (or beneficial interests therein) required to honor outstanding Warrants upon exercise thereof in accordance with the terms of this Warrant Agreement. The Company will (A) procure, at its sole expense, the listing of the Common Shares issuable upon exercise of the Warrants at any time, subject to issuance or notice of issuance, on all National Securities Exchanges and Alternative Securities Exchanges on which the Common Shares are then listed or traded and (B) maintain such listings of such Common Shares at all times after issuance. The Company shall take all action reasonably necessary to ensure that the Common Shares will be issued without violation of any applicable Law or regulation or of any requirement of any securities exchange on which the Common Shares are listed or traded.

Section 3.11 Charges, Taxes and Expenses. Issuance of the Warrant Certificates evidencing Warrants and issuance of Common Shares upon the exercise of the Warrants shall be made without charge for any documentary, stamp or similar issue or transfer tax or other incidental expense in respect of the issuance thereof, all of which taxes and expenses shall be paid by the Company; provided, however, that the Company shall not be required to pay any tax

that may be payable in respect of any Transfer involved in the issuance and delivery of Warrant Certificates evidencing such Warrants or Common Shares in book-entry form or any certificates for Common Shares or payment of cash or other property in a name or to any Person other than the Warrantholder of the Warrant Certificate surrendered upon exercise or Transfer, and the Company shall not be required to issue or deliver Warrant Certificates or Common Shares in book-entry form or any certificates for Common Shares or payment of cash or other property, as applicable, unless and until the Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have reasonably demonstrated that such tax has been paid.

Section 3.12 Cancellation of Warrant Certificates. Any Definitive Warrant Certificate surrendered for exercise shall, if surrendered to the Company, be delivered to the Warrant Agent. All Warrant Certificates surrendered or delivered to or received by the Warrant Agent for cancellation pursuant to this Section 3.12 or Section 2.4(e) or Section 2.4(k) shall be promptly cancelled by the Warrant Agent and shall not be reissued by the Company. The Warrant Agent shall destroy any such cancelled Warrant Certificates and deliver its certificate of destruction to the Company, unless the Company shall otherwise direct.

ARTICLE 4

ADJUSTMENTS

Section 4.1 Adjustments and Other Rights. The Exercise Price and the number of Common Shares into which each Warrant is to be convertible pursuant to Article 3 of this Warrant Agreement shall be subject to adjustment from time to time in accordance with this Article 4; provided that (i) no single event shall be subject to adjustment under more than one subsection of this Article 4 so as to result in duplication and (ii) if any single event would otherwise require adjustment of the Exercise Price pursuant to more than one such subsection, the adjustment that provides the highest value relative to the rights and interests of each Warrantholder shall be made; provided, further that, notwithstanding any provision of this Warrant Agreement to the contrary, any adjustment shall be made to the extent (and only to the extent) that such adjustment would not cause or result in a Warrantholder and its Affiliates, collectively, being in violation of any applicable Law, regulation or rule of any governmental authority or self-regulatory organization. Any adjustment (or portion thereof) prohibited pursuant to the immediately foregoing proviso shall be postponed and implemented on the first date on which such implementation would not result in the condition described in such proviso.

Section 4.2 Dividends, Distributions, Stock Splits, Subdivisions, Reclassifications or Combinations. If the Company shall (i) declare a dividend or make a distribution on its Common Shares in Common Shares, (ii) split, subdivide, recapitalize, restructure or reclassify the outstanding Common Shares into a greater number of Common Shares or effect a similar transaction or (iii) combine, recapitalize, restructure or reclassify the outstanding Common Shares into a smaller number of Common Shares or effect a similar transaction, in each case other than upon a transaction to which Section 4.5 or Section 4.6 applies, the number of Common Shares issuable upon exercise of a Warrant at the time of the Record Date for such dividend or distribution or the effective date of such split, subdivision, combination, recapitalization, restructuring, reclassification or similar transaction shall be proportionately adjusted so that the Warrantholder, after such date, shall be entitled to purchase the number of

Common Shares which such Warrantholder would have owned or been entitled to receive on such date had such Warrant been exercised immediately prior to such date. In such event, the Exercise Price in effect at the time of the Record Date for such dividend or distribution or the effective date of such split, subdivision, combination, recapitalization, restructuring, reclassification or similar transaction shall be adjusted to the number obtained by dividing (x) the product of (i) the number of Common Shares issuable upon the exercise of a Warrant before such adjustment and (ii) the Exercise Price in effect immediately prior to the Record Date or effective date, as the case may be, for such dividend, distribution, split, subdivision, combination, recapitalization, restructuring, reclassification or similar transaction giving rise to this adjustment by (y) the new number of Common Shares issuable upon exercise of a Warrant determined pursuant to the immediately preceding sentence.

Section 4.3 **Other Distributions**. In case the Company shall fix a Record Date for the making of a distribution to all holders of its Common Shares of (a) shares of any class other than Common Shares, (b) evidence of indebtedness of the Company or any Subsidiary, (c) other Securities, assets or cash (excluding dividends or distributions referred to in Section 4.2) or (d) rights or warrants (other than in connection with the adoption of a stockholder rights plan), in each such case, the Exercise Price in effect prior thereto shall be reduced immediately thereafter to the price obtained by multiplying the Exercise Price in effect immediately prior thereto by the fraction resulting from dividing (x) an amount equal to the difference resulting from (i) the number of Common Shares outstanding on such Record Date multiplied by the Fair Market Value of the Common Shares on the trading date immediately prior to such Record Date less (ii) the Fair Market Value of said shares, evidences of indebtedness, assets, cash, rights or warrants to be so distributed in the aggregate to all Common Shares outstanding on such Record Date by (y) the number of Common Shares outstanding on such Record Date multiplied by the Fair Market Value of the Common Shares on the trading date immediately prior to such Record Date. Such adjustment shall be made successively whenever such a Record Date is fixed. In such event, the number of Common Shares issuable upon the exercise of a Warrant shall be increased to the number obtained by dividing (x) the product of (i) the number of Common Shares issuable upon the exercise of a Warrant before such adjustment and (ii) the Exercise Price in effect immediately prior to the Record Date for the distribution giving rise to this adjustment by (y) the new Exercise Price determined in accordance with the second preceding sentence. In the event that such distribution is not so made, the Exercise Price and the number of Common Shares issuable upon exercise of a Warrant then in effect shall be readjusted, effective as of the date when the Board determines not to distribute such shares, evidences of indebtedness, assets, cash, rights or warrants, as the case may be, to the Exercise Price that would then be in effect and the number of Common Shares that would then be issuable upon exercise of a Warrant if such Record Date had not been fixed.

Section 4.4 **Dissolution, Total Liquidation or Winding Up**. If at any time there is a voluntary or involuntary dissolution, total liquidation or winding-up of the Company, then the Company shall provide each Warrantholder with written notice of the date on which such dissolution, liquidation or winding-up shall take place (and, in any event, not less than 30 days before any date set for definitive action). Such notice shall also specify the date as of which the record holders of Common Shares shall be entitled to exchange their Common Shares for Securities, money or other property deliverable upon such dissolution, liquidation or winding-up, as the case may be. On such date, each Warrantholder shall be entitled to receive, upon surrender of its Warrant for each Common Share then receivable upon exercise of such Warrant, the cash,

Securities or other property, less the Exercise Price for such Warrant then in effect, that such Warrantholder would have been entitled to receive in respect of such Common Share had such Warrant been exercised immediately prior to such dissolution, liquidation or winding-up. Upon receipt of such cash, Securities or other property, any and all rights of such Warrantholder to exercise such Warrant shall terminate in their entirety. If the cash, Securities or other property distributable in respect of such Common Share in the dissolution, liquidation or winding-up has a Fair Market Value which is less than the Exercise Price for such Warrant then in effect, no such cash, Securities or other property shall be delivered to such Warrantholder in respect of such Warrants and such Warrant shall terminate and be of no further force or effect upon the dissolution, liquidation or winding-up.

Section 4.5 Successor upon Consolidation, Merger and Sale of Assets.

(a) Other than with respect to a Liquidity Event, the Company may only consolidate or merge with any other Person (a "**Fundamental Equity Change**"), so long as the Company is the surviving Person, or, in the event that the Company is not the surviving Person:

(i) the successor to the Company assumes all of the Company's obligations under this Warrant Agreement and the Warrants in form and substance reasonably satisfactory to the Required Warrantholders; and

(ii) the successor to the Company provides written notice of such assumption to the Warrant Agent.

(b) In the case of any Fundamental Equity Change other than a Liquidity Event, the successor entity shall succeed to and be substituted for the Company with the same effect as if it had been named herein as the Company; provided, however, such successor entity shall provide the Warrant Agent with any such identifying corporate information as reasonably required by the Warrant Agent. Such successor entity thereupon may cause to be signed, and may issue any or all of the Warrants issuable pursuant to this Warrant Agreement which theretofore shall not have been signed by the Company; and, upon the order of such successor entity, instead of the Company, and subject to all the terms, conditions and limitations in this Warrant Agreement prescribed, the Warrant Agent shall authenticate and deliver, as applicable, any Warrants that previously shall have been signed and delivered by the officers of the Company to the Warrant Agent for authentication, and any Warrants which such successor entity thereafter shall cause to be signed and delivered to the Warrant Agent for such purpose.

(c) If a Liquidity Event is consummated prior to the Expiration Time and the Company duly and timely effects notice to the Warrantholders in accordance with Section 4.10, then any Warrants that are unexercised prior to the consummation of such Liquidity Event shall be deemed to have expired worthless and will be cancelled for no further consideration.

Section 4.6 Adjustment upon Reorganization Event.

(a) If there occurs any Fundamental Equity Change (other than a Liquidity Event) or any recapitalization, reorganization, consolidation, reclassification, change in

the outstanding Common Shares (other than changes resulting from a subdivision or combination to which Section 4.2 applies), statutory share exchange or other transaction (each such event a "**Reorganization Event**"), in each case as a result of which the Common Shares would be converted into, changed into or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (the "**Reference Property**"), then following the effective time of the Reorganization Event, the right to receive Common Shares upon exercise of a Warrant shall be changed to a right to receive, upon exercise of such Warrant, the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of one Common Shares would have owned or been entitled to receive in connection with such Reorganization Event (such kind and amount of Reference Property per share of Common Shares, a "**Unit of Reference Property**"). In the event holders of Common Shares have the opportunity to elect the form of consideration to be received in a Reorganization Event, the type and amount of consideration into which the Warrants shall be exercisable from and after the effective time of such Reorganization Event shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Shares in such Reorganization Event. The Company hereby agrees not to become a party to any Reorganization Event unless its terms are consistent with this Section 4.6.

(b) At any time from, and including, the effective time of a Reorganization Event:

(i) if Cash Settlement applies upon exercise of a Warrant, the Cash Settlement Share Amount shall be equal to a single Unit of Reference Property;

(ii) if Cashless Settlement applies upon exercise of a Warrant, the Cashless Settlement Share Amount shall be calculated pursuant to the definition thereof with one fully paid and nonassessable Common Share equal to a single Unit of Reference Property;

(iii) the Company shall pay cash in lieu of issuing such fractional Unit of Reference Property or any fractional Warrant in accordance with Section 3.6 based on the Fair Market Value of the Unit of Reference Property as of the Exercise Date; and

(iv) the Fair Market Value shall be calculated with respect to a Unit of Reference Property.

(c) On or prior to the effective time of any Reorganization Event (other than a Liquidity Event), the Company or the successor or purchasing Person, as the case may be, shall execute an amendment to this Warrant Agreement providing that the Warrants shall be exercisable for Units of Reference Property in accordance with the terms of this Section 4.6. If the Reference Property in connection with any Reorganization Event includes shares of stock or other securities and assets of a Person other than the successor or purchasing Person, as the case may be, in such Reorganization Event, then the Company shall cause such amendment to this Warrant Agreement to be executed by such other Person and such amendment shall contain such additional provisions to protect the interests of the Warrantholder (for the benefit of the Beneficial Owners under this

Warrant Agreement) as the Board and the Required Warrantholders shall reasonably consider necessary by reason of the foregoing. Any such amendment to this Warrant Agreement shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 4. In the event the Company shall execute an amendment to this Warrant Agreement pursuant to this Section 4.6, the Company shall promptly file with the Warrant Agent a certificate executed by a duly authorized officer of the Company briefly stating the reasons therefor, the kind or amount of cash, securities or property or assets that will comprise a Unit of Reference Property after the relevant Reorganization Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with. The Company shall cause notice of the execution of the amendment to be mailed to the Warrantholder, at its address appearing on the Warrant Register, within five Business Days after execution thereof.

(d) The above provisions of this Section 4.6 shall similarly apply to successive Reorganization Events.

(e) If this Section 4.6 applies to any event or occurrence, no other provision of this Article 4 shall apply to such event or occurrence (other than Section 4.5).

Section 4.7 Rounding of Calculations; Minimum Adjustments. All calculations under this Article 4 shall be made to the nearest one-tenth (1/10th) of a cent or to the nearest one-hundredth (1/100th) of a share, as the case may be. Any provision of this Article 4 to the contrary notwithstanding, no adjustment in the Exercise Price or the number of Common Shares issuable upon the exercise of a Warrant shall be made if the amount of such adjustment would be less than $0.01 or one-tenth (1/10th) of a Common Share, respectively, but any such amount shall be carried forward and an adjustment with respect thereto shall be made at the time of and together with any subsequent adjustment which, together with such amount and any other amount or amounts so carried forward, shall aggregate $0.01 or 1/10th of a Common Share, respectively, or more, subject in all cases to Section 3.6.

Section 4.8 Timing of Issuance of Additional Common Shares Upon Certain Adjustments. In any case in which the provisions of this Article 4 shall require that an adjustment shall become effective immediately after a Record Date for an event or an agreement to issue or sell Common Shares or Convertible Securities, the Company may defer until the occurrence of such event, issuance or sale (i) issuing to each Warrantholder of a Warrant exercised after such Record Date or date of such agreement and before the occurrence of such event, issuance or sale the additional Common Shares issuable upon such exercise by reason of the adjustment required by such Record Date or agreement over and above the Common Shares issuable upon such exercise before giving effect to such adjustment and (ii) paying to such Warrantholder any amount of cash in lieu of a fractional Common Share.

Section 4.9 Statement Regarding Adjustments. Whenever the Exercise Price or the number of Common Shares issuable upon exercise of a Warrant shall be adjusted as provided in this Article 4, the Company shall promptly, and in any event within three Business Days, file, at the principal office of the Company, a statement showing in reasonable detail the facts requiring such adjustment and the Exercise Price that shall be in effect and the number of Common Shares issuable upon exercise of a Warrant after such adjustment. The Company shall also cause a copy

of such statement to be delivered to each Warrantholder at the address appearing in the Company's records.

Section 4.10 Notice of Adjustment Event. In the event that (i) the Company shall propose to take any action of the type described in this Article 4 or (ii) the Company fixes any Record Date for any event, the Company shall give notice to each Warrantholder, in the manner set forth in Section 4.9, which notice shall specify the Record Date, if any, with respect to any such action and the approximate date on which such action is to take place. Such notice shall also set forth the facts with respect thereto (including the material terms with respect to any contemplated transaction) and indicate the effect on the Exercise Price and the number, kind or class of shares or other Securities or property which shall be deliverable upon exercise or exchange of a Warrant, if any. Such notice shall be given at least 10 days prior to the taking of such proposed action; provided that notice of any Liquidity Event shall be given at least 21 days prior to the taking of such proposed action. Failure to give such notice, or any defect therein, shall not affect the legality or validity of any such action. Nothing herein shall prohibit the Warrantholders from exercising their Warrants during the 10 day period commencing on the date of such notice (21 days in the case of a Liquidity Event).

Section 4.11 Proceedings Prior to Any Action Requiring Adjustment. As a condition precedent to the taking of any action which would require an adjustment pursuant to this Article 4, the Company shall take any action which may be necessary, including obtaining regulatory, stock exchange (if applicable) or stockholder approvals or exemptions under the Securities Act, in order that the Company may thereafter validly and legally issue, as fully paid and nonassessable, all Common Shares that each Warrantholder is entitled to receive upon exercise of a Warrant.

Section 4.12 Adjustment Rules. Any adjustments pursuant to this Article 4 shall be made successively whenever an event referred to herein shall occur. If an adjustment in the Exercise Price made hereunder would reduce the Exercise Price to an amount below the par value of the Common Shares, then such adjustment in the Exercise Price made hereunder shall reduce the Exercise Price to the par value of the Common Shares and then, so long as the Company shall have taken any corporate action which would, in the opinion of its counsel, be necessary in order that the Company may validly issue Common Shares at the Exercise Price as so adjusted in accordance with its obligations under Section 3.9, to such lower par value as may then be established.

Section 4.13 Optional Tax Adjustment. The Company may at its option, at any time prior to the Expiration Time, increase the number of Common Shares into which each Warrant is exercisable, or decrease the Exercise Price for such Warrant, in addition to those changes otherwise required by this Article 4, as deemed advisable by the Board, in order that any event treated for Federal income tax purposes as a dividend of stock or stock rights shall not be taxable to the recipients or that such tax shall be diminished.

Section 4.14 **Stockholder Rights Plans**. If the Company has a stockholder rights plan in effect with respect to the Common Shares, upon exercise of a Warrant the applicable Beneficial Owner shall be entitled to receive, in addition to the Common Share, the rights under such stockholder rights plan, subject to readjustment in the event of the expiration, termination or redemption of such rights.

ARTICLE 5

OTHER PROVISIONS RELATING TO RIGHTS OF WARRANTHOLDERS

Section 5.1 **No Rights as Stockholders**. Nothing contained in this Warrant Agreement shall be construed as conferring upon any Person, by virtue in and of itself of holding a Warrant Certificate evidencing any Warrant or having a beneficial interest in a Warrant, the right to vote, receive any dividend or other distribution, receive notice of, or attend, any meeting of stockholders or otherwise exercise any rights whatsoever, in each case, as a stockholder of the Company to the extent such vote, dividend, giving of notice, meeting or other exercise of rights (or, if applicable, the relevant Record Date therefor) precedes the Close of Business on the Exercise Date with respect to the exercise of such Warrant. No Warrantholder shall have any right not expressly conferred hereunder or under, or by applicable Law with respect to, the Warrant Certificate held by such holder.

Section 5.2 **Modification/Amendment**.

(a) This Warrant Agreement or the Warrants may be modified or amended by the Company and the Warrant Agent, without the consent of any Warrantholder, for the purposes of (i) curing any ambiguity or correcting or supplementing any defective provision contained in this Warrant Agreement or (ii) providing for the assumption of the Company's obligations pursuant to Section 4.5; provided that, in each case, any such modification or amendment does not adversely affect the interests of the Warrantholders in any material respect.

(b) This Warrant Agreement or the Warrants may be modified or amended, or noncompliance with any provision of the Warrant Agreement or the Warrants may be waived, only upon the written consent of the Required Warrantholders and the Company; provided, however, that any modification, amendment or waiver that adversely affects the interests of a Warrantholder disproportionately relative to any other Warrantholder (including any Beneficial Owner) in any material respect shall require the written consent of such Warrantholder so affected; provided, further, no such modification, amendment or waiver may, without the written consent or the affirmative vote of each Warrantholder affected (A) change the Expiration Time to an earlier time or date; or (B) increase the Exercise Price or decrease the number of Common Shares for which a Warrant is exercisable (except as set forth in Article 4). Any consent delivered by electronic means shall be deemed to constitute written consent.

(c) Upon execution and delivery of any amendment pursuant to this Section 5.2, such amendment shall be considered a part of this Warrant Agreement for all purposes and every Warrantholder holding a Warrant Certificate theretofore or thereafter countersigned and delivered hereunder shall be bound thereby.

Section 5.3 **Rights of Action**. All rights of action against the Company in respect of this Warrant Agreement are vested in the Warrantholders, and any Warrantholder, without the consent of the Warrant Agent or any other Warrantholder, may, on such Warrantholder's own behalf and for such Warrantholder's own benefit, enforce and may institute and maintain any suit, action or proceeding against the Company suitable to enforce, or otherwise in respect of, such Warrantholder's right to exercise such Warrantholder's Warrants in the manner provided in this Warrant Agreement.

Section 5.4 **Issuance Obligation Remedies**. Nothing in this Warrant Agreement shall limit the right of any Warrantholder to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance or injunctive relief with respect to the Company's violation of its obligations under this Warrant Agreement, including, without limitation, any failure by the Company to timely issue Warrant Shares upon exercise of such Warrant as required pursuant to the terms hereof.

Section 5.5 **No Impairment**.

(a) The Company will not, by amendment to its Company's certificate of incorporation or bylaws or through reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of the Warrants or this Warrant Agreement, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Warrantholders and the Beneficial Owners under this Warrant Agreement against impairment.

(b) Without limiting the generality of the foregoing, the Company will (a) not increase the par value of any Common Shares obtainable upon the exercise of the Warrants and (b) take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Common Shares upon the exercise of the Warrants.

(c) Before taking any action that would cause an adjustment reducing the Exercise Price below the then par value of the Common Shares, the Company will take any corporate action that may be necessary in order that the Company may validly and legally issue paid and non-assessable shares of Common Shares at such adjusted Exercise Price.

ARTICLE 6

CONCERNING THE WARRANT AGENT AND OTHER MATTERS

Section 6.1 **Change of Warrant Agent**.

(a) The Warrant Agent, or any successor to it hereafter appointed, may resign its duties and be discharged from all further duties and liabilities hereunder (except for liability arising as a result of the Warrant Agent's own gross negligence, willful misconduct actual fraud or material breach of this Warrant Agreement) after giving 60 days' notice in writing to the Company, except that such shorter notice may be given as the Company shall, in writing, accept as sufficient. If the office of the Warrant Agent becomes vacant by resignation or incapacity to act or otherwise, the Company shall

appoint in writing a successor warrant agent in place of the Warrant Agent. If the Company shall fail to make such appointment within a period of 30 days after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated warrant agent or by the Required Warrantholders, then the Required Warrantholders may appoint a successor warrant agent.

(b) The Warrant Agent may be removed by the Company at any time upon 30 days' written notice to the Warrant Agent; provided, however, that the Company shall not remove the Warrant Agent until a successor warrant agent meeting the qualifications hereof shall have been appointed; provided, further, that, until such successor warrant agent has been appointed, the Company shall compensate the Warrant Agent in accordance with Section 6.2.

(c) Any successor warrant agent, whether appointed by the Company or by such a court, shall be a corporation or banking association organized, in good standing and doing business under the Laws of the United States of America or any state thereof or the District of Columbia, and authorized under such Laws to exercise corporate trust powers and subject to supervision or examination by federal or state authority and having a combined capital and surplus of not less than $50,000,000. The combined capital and surplus of any such successor warrant agent shall be deemed to be the combined capital and surplus as set forth in the most recent report of its condition published prior to its appointment; provided that such reports are published at least annually pursuant to Law or to the requirements of a federal or state supervising or examining authority.

(d) After acceptance in writing of such appointment by the successor warrant agent, such successor warrant agent shall be vested with all the authority, powers, rights, immunities, duties and obligations of its predecessor warrant agent with like effect as if originally named as warrant agent hereunder, without any further act or deed; but if for any reason it becomes necessary or appropriate, the predecessor warrant agent shall execute and deliver, at the expense of the Company, an instrument transferring to such successor warrant agent all the authority, powers and rights of such predecessor warrant agent hereunder; and upon request of any successor warrant agent, the Company shall make, execute, acknowledge and deliver any and all instruments in writing to more fully and effectually vest in and conform to such successor warrant agent all such authority, powers, rights, immunities, duties and obligations. Upon assumption by a successor warrant agent of the duties and responsibilities hereunder, the predecessor warrant agent shall deliver and transfer, at the expense of the Company, to the successor warrant agent any property at the time held by it hereunder. As soon as practicable after such appointment, the Company shall give notice thereof to the predecessor warrant agent and each transfer agent for its Common Shares. Failure to give such notice, or any defect therein, shall not affect the validity of the appointment of the successor warrant agent.

(e) Any entity into which the Warrant Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Warrant Agent shall be a party, or any Person succeeding to all or substantially all of the corporate trust or agency business of the Warrant Agent, shall be the successor warrant agent under this Warrant Agreement without the execution or filing of any paper or any further act on the part of any of the

parties hereto; provided, however, that such entity would be eligible for appointment as a successor warrant agent under Section 6.1(c).

Section 6.2 Compensation; Further Assurances. The Company agrees that it will (a) pay the Warrant Agent reasonable compensation for its services as Warrant Agent in accordance with Exhibit C attached hereto and, except as otherwise expressly provided, will pay or reimburse the Warrant Agent upon written demand for all reasonable and documented expenses, disbursements and advances incurred or made by the Warrant Agent in accordance with any of the provisions of this Warrant Agreement (including the reasonable and documented compensation, expenses and disbursements of its counsel incurred in connection with the execution and administration of this Warrant Agreement), except any such expense, disbursement or advance as may arise from its or any of their gross negligence, willful misconduct or actual fraud, and (b) perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Warrant Agent for the carrying out or performing of the provisions of this Warrant Agreement. The Warrant Agent agrees to provide the Company with prior written notice of the retention of counsel whose compensation, expenses and disbursements are to be paid or reimbursed by the Company under this Section 6.2.

Section 6.3 Reliance on Counsel. The Warrant Agent may consult with legal counsel (who may be legal counsel for the Company), and the written opinion of such counsel or any advice of legal counsel subsequently confirmed by a written opinion of such counsel shall be full and complete authorization and protection to the Warrant Agent as to any action taken or omitted by it in good faith and in accordance with such written opinion or advice.

Section 6.4 Proof of Actions Taken. Whenever in the performance of its duties under this Warrant Agreement the Warrant Agent shall deem it necessary or desirable that any matter be proved or established by the Company prior to taking or suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the good faith of the Warrant Agent, be deemed to be conclusively proved and established by a certificate executed by a duly authorized officer of the Company delivered to the Warrant Agent, and such certificate shall, in the good faith of the Warrant Agent, be relied upon by the Warrant Agent for any action taken, suffered or omitted in good faith by it under the provisions of this Warrant Agreement; provided that in its discretion, the Warrant Agent may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as to it may seem reasonable.

Section 6.5 Correctness of Statements. The Warrant Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Warrant Agreement (except its countersignature thereof) or be required to verify the same, and all such statements and recitals are and shall be deemed to have been made by the Company only.

Section 6.6 Validity of Agreement. From time to time, the Warrant Agent may apply to any duly authorized officer of the Company for instruction, and the Company shall provide the Warrant Agent with such instructions concerning the services to be provided hereunder. The Warrant Agent shall not be held to have notice of any change of authority of any Person, until receipt of notice thereof from the Company. The Warrant Agent shall not be responsible for any breach by the Company of any covenant or condition contained in this Warrant Agreement, nor shall it by any act hereunder be deemed to make any representation or warranty as to the

authorization or reservation of any Common Shares to be issued pursuant to this Warrant Agreement or any Warrants or as to whether any Common Shares will, when issued, be validly issued, fully paid and nonassessable. The Warrant Agent and its agents and subcontractors shall not be liable and shall be indemnified by the Company for any action taken or omitted by Warrant Agent in reliance in good faith upon any Company instructions except to the extent that the Warrant Agent had actual knowledge of facts and circumstances that would render such reliance unreasonable.

Section 6.7 Use of Agents. The Warrant Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys or agents provided that the Warrant Agent shall remain responsible for the activities or omissions of any such agent or attorney and reasonable care has been exercised in the selection and in the continued employment of such attorney or agent.

Section 6.8 Liability of Warrant Agent. The Warrant Agent shall incur no liability or responsibility to the Company or to any Warrantholder for any action taken or not taken (a) in reliance on any notice, resolution, waiver, consent, order, certificate, or other paper, document or instrument reasonably believed by it to be genuine and to have been signed, sent and presented by the proper party or parties or (b) in relation to its services under this Warrant Agreement, unless such liability arises out of or is attributable to the Warrant Agent's gross negligence, material breach of this Warrant Agreement, willful misconduct or actual fraud. The Company agrees to indemnify the Warrant Agent and save it harmless against any and all losses, expenses and liabilities, including judgments, costs and reasonable counsel fees, for anything done or omitted in good faith by the Warrant Agent in the execution of this Warrant Agreement or otherwise arising in connection with this Warrant Agreement, except as a result of the Warrant Agent's gross negligence, material breach of this Warrant Agreement, willful misconduct or actual fraud (as determined by a court of competent jurisdiction in a final non-appealable judgment). The Warrant Agent shall be liable hereunder only for its gross negligence, material breach of this Warrant Agreement, actual fraud or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment), for which the Warrant Agent is not entitled to indemnification under this Warrant Agreement.

Section 6.9 Legal Proceedings. The Warrant Agent shall be under no obligation to institute any action, suit or legal proceeding or to take any other action likely to involve expense unless the Company or any Warrantholder shall furnish the Warrant Agent with reasonable indemnity for any costs and expenses which may be incurred, but this provision shall not affect the power of the Warrant Agent to take such action as the Warrant Agent may consider proper, whether with or without any such security or indemnity. The Warrant Agent shall promptly notify the Company and each Warrantholder in writing of any claim made or action, suit or proceeding instituted against it arising out of or in connection with this Warrant Agreement.

Section 6.10 Actions as Agent.

(a) The Warrant Agent shall act hereunder solely as agent and not in a ministerial or fiduciary capacity, and its duties shall be determined solely by the provisions hereof. The duties and obligations of the Warrant Agent shall be determined solely by the express provisions of the Warrant Agreement or of the Warrant Certificates, and the Warrant Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth in the Warrant Agreement or in the Warrant

Certificates. No implied covenants or obligations shall be read into the Warrant Agreement against the Warrant Agent. The Warrant Agent shall not be liable for anything that it may do or refrain from doing in good faith in connection with this Warrant Agreement except for its own gross negligence, willful misconduct or actual fraud.

(b) The Warrant Agent shall not, by countersigning Warrant Certificates or by any other act hereunder, be deemed to make any representations as to validity or authorization of the Warrants or the Warrant Certificates (except as to its countersignature thereon). The Warrant Agent shall not be responsible for any failure of the Company to make any cash payment or to issue, transfer or deliver any Common Shares or stock certificates or other securities or property upon the surrender of any Warrant Certificate for the purpose of exercise or upon any adjustment pursuant to Article 4 hereof or to comply with any of the covenants of the Company contained in Article 4 hereof.

(c) The Warrant Agent shall not (i) be liable for any recital or statement of fact contained herein or in the Warrant Certificates or for any action taken, suffered or omitted by it in good faith on the belief that any Warrant Certificate or any other documents or any signatures are genuine or properly authorized, (ii) be responsible for any failure on the part of the Company to comply with any of its covenants and obligations contained in this Warrant Agreement or in the Warrant Certificates or (iii) be liable for any act or omission in connection with this Warrant Agreement except for its own gross negligence, actual fraud or willful misconduct.

(d) The Warrant Agent is hereby authorized to accept and protected in accepting instructions with respect to the performance of its duties hereunder by Company Order and to apply to any such officer named in such Company Order for instructions (which instructions will be promptly given in writing when requested), and the Warrant Agent shall not be liable for any action taken or suffered to be taken by it in good faith in accordance with the instructions in any Company Order.

Section 6.11 Appointment and Acceptance of Agency. The Company hereby appoints the Warrant Agent to act as agent for the Company in accordance with the instructions set forth in this Warrant Agreement, and the Warrant Agent hereby accepts the agency established by this Warrant Agreement and agrees to perform the same upon the terms and conditions set forth in this Warrant Agreement and in the Warrant Certificates or as the Company and the Warrant Agent may hereafter agree, by all of which the Company and the Warrantholders of Warrant Certificates, by their acceptance thereof, shall be bound; provided, however, that the terms and conditions contained in the Warrant Certificates are subject to and governed by this Warrant Agreement or any other terms and conditions hereafter agreed to by the Company and the Warrant Agent.

Section 6.12 Appointment of Countersigning Agent.

(a) The Warrant Agent may appoint a Countersigning Agent or Agents which shall be authorized to act on behalf of the Warrant Agent to countersign Warrant Certificates issued upon original issue and upon exchange, registration of Transfer or pursuant to Section 2.8, and Warrant Certificates so countersigned shall be entitled to the

benefits of this Warrant Agreement equally and proportionately with any and all other Warrant Certificates duly executed and delivered hereunder. Wherever reference is made in this Warrant Agreement to the countersignature and delivery of Warrant Certificates by the Warrant Agent or to Warrant Certificates countersigned by the Warrant Agent, such reference shall be deemed to include countersignature and delivery on behalf of the Warrant Agent by a Countersigning Agent and Warrant Certificates countersigned by a Countersigning Agent. Each Countersigning Agent shall be acceptable to the Company and shall at the time of appointment be a corporation doing business under the Laws of the United States of America or any State thereof in good standing, authorized under such Laws to act as Countersigning Agent, and having a combined capital and surplus of not less than $25,000,000. The combined capital and surplus of any such new Countersigning Agent shall be deemed to be the combined capital and surplus as set forth in the most recent annual report of its condition published by such Countersigning Agent prior to its appointment; provided, however, such reports are published at least annually pursuant to Law or to the requirements of a Federal or state supervising or examining authority.

(b) Any corporation into which a Countersigning Agent may be merged or any corporation resulting from any consolidation to which such Countersigning Agent shall be a party, shall be a successor Countersigning Agent without any further act; provided, that, such corporation would be eligible for appointment as a new Countersigning Agent under the provisions of Section 6.12(a), without the execution or filing of any paper or any further act on the part of the Warrant Agent or the Countersigning Agent. Any such successor Countersigning Agent shall promptly cause notice of its succession as Countersigning Agent to be given in accordance with Section 6.14 to each Warrantholder of a Warrant Certificate at such Warrantholder's last address as shown on the Warrant Register.

(c) A Countersigning Agent may resign at any time by giving 30 days' prior written notice thereof to the Warrant Agent and to the Company. The Warrant Agent may at any time terminate the agency of a Countersigning Agent by giving 30 days' prior written notice thereof to such Countersigning Agent and to the Company.

(d) The Warrant Agent agrees to pay to each Countersigning Agent from time to time reasonable compensation for its services under this Section 6.12 and the Warrant Agent shall be entitled to be reimbursed for such payments, subject to the provisions of Section 6.2.

(e) Any Countersigning Agent shall have the same rights and immunities as those of the Warrant Agent set forth in Section 6.8 and Section 6 10.

Section 6.13 Successors and Assigns. All the covenants and provisions of this Warrant Agreement by or for the benefit of the Company or the Warrant Agent shall bind and inure to the benefit of their respective successors and assigns hereunder. The Warrant Agent may assign this Warrant Agreement or any rights and obligations hereunder, in whole or in part, to an Affiliate thereof with the prior consent of the Company, provided that the Warrant Agent may make such an assignment without consent of the Company to any successor to the Warrant Agent by consolidation, merger or transfer of its assets subject to the terms and conditions of this Warrant Agreement.

Section 6.14 **Notices**. Any notice or demand authorized by this Warrant Agreement to be given or made to the Company shall be sufficiently given or made if sent by mail first-class, postage prepaid, addressed (until another address is filed in writing by the Company with the Warrant Agent) or electronic mail, as follows:

Chesapeake Energy Corporation
6100 North Western Avenue,
Oklahoma City, Oklahoma 73118
Attention: James R. Webb, Executive Vice President, General Counsel and Corporate Secretary
Email: jim.webb@chk.com

Any notice or demand authorized by this Warrant Agreement to be given or made to the Warrant Agent shall be sufficiently given or made if sent by mail first-class, postage prepaid, addressed (until another address is filed in writing by the Warrant Agent with the Company) or electronic mail, as follows:

Equiniti Trust Company
P.O. Box 64874
St. Paul, MN 55164
Attention: Nancy Petersen
Email: Nancy.Petersen@equiniti.com

Any notice or demand authorized by this Warrant Agreement to be given or made to any Warrantholder shall be sufficiently given or made if sent by first-class mail, postage prepaid or electronic mail to the last address of the Warrantholder as it shall appear on the Warrant Register, with a copy (which shall not constitute notice) to its counsel listed on such Warrant Register.

Section 6.15 **Applicable Law; Jurisdiction**. The validity, interpretation and performance of this Warrant Agreement and the Warrant Certificates evidencing the Warrants shall be governed in accordance with the Laws of the State of New York, without giving effect to the principles of conflicts of Laws thereof that would result in the application of Law of another jurisdiction. The parties hereto irrevocably consent to the exclusive jurisdiction of the courts of the State of New York and any federal court located in such state in connection with any action, suit or proceeding arising out of or relating to this Warrant Agreement or the Warrant Certificates issued hereunder. Each party agrees to commence any such suit, action or proceeding in such court. Each party hereto hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any suit, action or proceeding with respect to this Warrant Agreement or the Warrant Certificates issued hereunder, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason other than the failure to serve process in accordance with this Section 6.15, that its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise), and to the fullest extent permitted by applicable Law, that the suit, action or proceeding in any such court is brought in an inconvenient forum, or that this Warrant Agreement or the Warrant Certificates issued hereunder, or the subject matter hereof, may not be enforced in or by such courts and further irrevocably waives, to the fullest extent permitted by applicable Law, the benefit of any defense that would hinder, fetter or delay the levy, execution or collection of any amount to which the

party is entitled pursuant to the final judgment of any court having jurisdiction. Each party irrevocably consents to the service of process out of any of the aforementioned courts in any such suit, action or proceeding by the mailing of copies thereof by registered mail, postage prepaid, to such party at its mailing address determined in accordance with this Warrant Agreement, such service of process to be effective upon acknowledgment of receipt of such registered mail. Nothing herein shall affect the right of any party to serve process in any other manner permitted by Law.

Section 6.16 **Waiver of Jury Trial**. EACH OF THE COMPANY AND THE WARRANT AGENT ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS WARRANT AGREEMENT OR A WARRANT CERTIFICATE EVIDENCING A WARRANT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PERSON HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PERSON MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS WARRANT AGREEMENT OR A WARRANT CERTIFICATE EVIDENCING A WARRANT. EACH OF THE COMPANY AND THE WARRANT AGENT CERTIFIES AND ACKNOWLEDGES THAT (a) NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (b) SUCH PERSON UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (c) SUCH PERSON MAKES THIS WAIVER VOLUNTARILY, AND (d) SUCH PERSON HAS BEEN INDUCED TO ENTER INTO THIS WARRANT AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 6.17 **Specific Performance**. Each of the Company and the Warrant Agent acknowledges that a breach or threatened breach by such party of any of its obligations under this Warrant Agreement would give rise to irreparable harm to the other party hereto for which monetary damages would not be an adequate remedy and hereby agrees that in the event of a breach or a threatened breach by such party of any such obligations, the other party hereto shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction.

Section 6.18 **Benefit of this Warrant Agreement**. Nothing in this Warrant Agreement expressed and nothing that may be implied from any of the provisions hereof is intended, or shall be construed, to confer upon, or give to, any Person other than the parties hereto and the Warrantholders any right, remedy or claim under or by reason of this Warrant Agreement or of any covenant, condition, stipulation, promise or agreement hereof, and all covenants, conditions, stipulations, promises and agreements in this Warrant Agreement contained shall be for the sole and exclusive benefit of the parties hereto and their respective successors and permitted assigns and the Warrantholders. Each Warrantholder, by acceptance of a Warrant Certificate, agrees to all of the terms and provisions of this Warrant Agreement applicable thereto.

Section 6.19 **Registered Warrantholder**. Every Warrantholder, by accepting a Warrant Certificate, consents and agrees with the Company, with the Warrant Agent and with every subsequent holder of such Warrant Certificate that, prior to due presentment for registration of Transfer, the Company and the Warrant Agent may deem and treat the Person in whose name any Warrant Certificates are registered in the Warrant Register as the absolute owner thereof and of the Warrants evidenced thereby for all purposes whatever (notwithstanding any notation of ownership or other writing thereon made by anyone other than the Company or the Warrant Agent) and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary or be bound to recognize any equitable or other claim to or interest in any Warrant Certificates or any Warrants evidenced thereby on the part of any other Person and shall not be liable for any registration of Transfer of Warrant Certificates that are registered or to be registered in the name of a fiduciary or the nominee of a fiduciary unless made with actual knowledge that a fiduciary or nominee is committing a breach of trust in requesting such registration of Transfer or with such knowledge of such facts that its participation therein amounts to actual fraud.

Section 6.20 **Headings**. The Article and Section headings herein are for convenience only and are not a part of this Warrant Agreement and shall not affect the interpretation thereof.

Section 6.21 **Counterparts**. This Warrant Agreement may be executed in any number of counterparts on separate counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument. A signed copy of this Warrant Agreement delivered by e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Warrant Agreement.

Section 6.22 **Entire Agreement**. This Warrant Agreement constitutes the entire agreement of the Company, the Warrant Agent and the Warrantholders with respect to the subject matter hereof and supersede all prior agreements and undertakings, both written and oral, among the Company, the Warrant Agent and the Warrantholders with respect to the subject matter hereof.

Section 6.23 **Severability**. Wherever possible, each provision of this Warrant Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Warrant Agreement shall be prohibited by or invalid under applicable Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Warrant Agreement.

Section 6.24 **Termination**. This Warrant Agreement shall terminate at the earlier to occur of (i) the Expiration Time (or, if later, Close of Business on the Settlement Date with respect to all exercises of Warrants as to which the respective Exercise Date is prior to the Expiration Time) and (ii) the date on which all outstanding Warrants have been exercised. All provisions regarding indemnification, warranty, liability and limits thereon shall survive the termination or expiration of this Warrant Agreement.

Section 6.25 **Confidentiality**. The Warrant Agent and the Company agree that personal, non-public Warrantholder information which is exchanged or received pursuant to the negotiation or the carrying out of this Warrant Agreement shall remain confidential, and shall not be voluntarily disclosed to any other Person, except disclosures pursuant to bankruptcy proceedings, applicable securities Laws or otherwise as may be required by Law, including, without limitation, pursuant to subpoenas from state or federal government authorities.

Section 6.26 **Rule 144 Information**. If and when the Company becomes subject to the reporting obligations of the Securities Act and the Exchange Act, the Company covenants that it will use its reasonable best efforts to timely file all reports and other documents required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations promulgated by the U.S. Securities and Exchange Commission thereunder. In addition, whether or not the Company becomes subject to the reporting obligations of the Securities Act or the Exchange Act, the Company will use reasonable best efforts to take such further action as the Warrantholders may reasonably request, all to the extent required from time to time to enable such Warrantholders to sell the Warrants without registration under the Securities Act within the limitation of the exemptions provided by (i) Rule 144 or Regulation S under the Securities Act, as such rules may be amended from time to time or (ii) any successor rule or regulation hereafter adopted by the U.S. Securities and Exchange Commission.

Section 6.27 **Representations and Warranties of the Company**. The Company hereby represents and warrants to the Warrantholders that (i) it has the corporate power and authority to execute this Warrant Agreement and consummate the transactions contemplated by this Warrant Agreement, (ii) there are no statutory or contractual stockholders' preemptive rights or rights of refusal with respect to the issuance of any Warrants and (iii) the execution and delivery by the Company of this Warrant Agreement and the issuance of the Common Shares upon exercise of any Warrant do not and shall not (A) conflict with or result in a breach of the terms, conditions or provisions of, (B) constitute a default under, (C) result in the creation of any lien, security interest, charge or encumbrance upon the Company's capital stock or assets pursuant to, (D) result in a violation of, or (E) require any authorization, consent, approval, exemption or other action by or notice or declaration to, or filing with, any court or administrative or governmental body or agency pursuant to, the Company's certificate of incorporation or bylaws or any Law in effect as of the date hereof to which the Company is subject, or any agreement, instrument, order, judgment or decree to which the Company is subject as of the date hereof, except for any such authorization, consent, approval, notice or exemption required under applicable securities Laws.

[signature page follows]

IN WITNESS WHEREOF, this Warrant Agreement has been duly executed by the parties hereto as of the day and year first above written.

CHESAPEAKE ENERGY CORPORATION

By: /s/ James R. Webb

Name: James R. Webb

Title: Executive Vice President – General Counsel and Corporate Secretary

EQUINITI TRUST COMPANY

By: /s/ Martin J. Knapp

Name: Martin J. Knapp

Title: SVP, Relationship Director

EXHIBIT A

[Face of Warrant Certificate][1]

CHESAPEAKE ENERGY CORPORATION

WARRANT CERTIFICATE

EVIDENCING

CLASS B WARRANTS TO PURCHASE COMMON STOCK

[FACE]

No. [__] CUSIP No. 165167 172

[UNLESS THIS GLOBAL WARRANT CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("**DTC**"), TO CHESAPEAKE ENERGY CORPORATION (THE "**COMPANY**"), THE CUSTODIAN OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFER OF THIS GLOBAL WARRANT CERTIFICATE SHALL BE LIMITED TO TRANSFERS IN WHOLE, AND NOT IN PART, TO THE COMPANY, DTC, THEIR SUCCESSORS AND THEIR RESPECTIVE NOMINEES.][2]

[1] To be removed in the versions of the Warrant Certificates printed in multiple copies for use by the Warrant Agent in preparing Warrants Certificates for issuance and delivery from time to time to holders.

[2] Include only on Global Warrant Certificate.

No. [__] 12,345,679 Warrants

CUSIP No. 165167 172

THIS CERTIFIES THAT, for value received, [_____], or registered assigns, is the registered owner of the number of Class B Warrants to Purchase Common Shares of Chesapeake Energy Corporation, an Oklahoma corporation (the "**Company**", which term includes any successor thereto under the Warrant Agreement) specified above [or such lesser number as may from time to time be endorsed on the "Schedule of Decreases" attached hereto][3], and is entitled, subject to and upon compliance with the provisions hereof and of the Warrant Agreement, at such Warrantholder's option, at any time when the Warrants evidenced hereby are exercisable, to purchase from the Company one Common Share of the Company for each Warrant evidenced hereby, at the purchase price of $32.13 per share (as adjusted from time to time, the "**Exercise Price**"), payable in full at the time of purchase, the number of Common Shares into which and the Exercise Price at which each Warrant shall be exercisable each being subject to adjustment as provided in Article 4 of the Warrant Agreement.

All Common Shares issuable by the Company upon the exercise of Warrants shall, upon such issuance, be duly and validly issued and fully paid and nonassessable.

Each Warrant evidenced hereby may be exercised by the Warrantholder hereof at the Exercise Price then in effect on any Business Day from and after the Closing Date until the Expiration Time (as defined on the reverse hereof).

Subject to the provisions hereof and of the Warrant Agreement, the Warrantholder of this Warrant Certificate may exercise all or any whole number of the Warrants evidenced hereby by [providing notice to the Warrant Agent at its office maintained for such purpose (the "**Corporate Agency Office**") a duly completed and executed Exercise Notice as to the number of Warrants being exercised and, if applicable, whether Cashless Settlement is being elected with respect thereto, and delivering such Warrants by book-entry transfer through the facilities of the Depositary, to the Warrant Agent in accordance with the Applicable Procedures and otherwise complying with Applicable Procedures in respect of the exercise of such Warrants][4] [surrendering to the Warrant Agent this Warrant Certificate at the Corporate Agency Office and delivering to the Warrant Agent a duly completed and executed Exercise Notice as to whether Cashless Settlement is being elected with respect thereto][5], together with payment in full to the Warrant Agent of (x) those applicable taxes and charges required to be paid by the Warrantholder, if any, and (y) except in the case of a Cashless Settlement, the aggregate of the Exercise Price as then in effect for each Common Share receivable upon exercise of each Warrant being submitted for exercise. Any such payment of the Exercise Price is to be by wire transfer in immediately available funds to such account of the Company at such banking institution as the Company shall have designated from time to time for such purpose.

[3] Include only on Global Warrant Certificate.

[4] Include only on Global Warrant Certificate.

[5] Include only on Definitive Warrant Certificate.

Reference is hereby made to the further provisions of this Warrant Certificate set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless this Warrant Certificate has been countersigned by the Warrant Agent by manual signature of an authorized officer on behalf of the Warrant Agent, this Warrant Certificate shall not be valid for any purpose and no Warrant evidenced hereby shall be exercisable.

IN WITNESS WHEREOF, the Company has caused this certificate to be duly executed under its corporate seal.

Dated: February 9, 2021

CHESAPEAKE ENERGY CORPORATION

By: _____
Name: James R. Webb
Title: Executive Vice President - General Counsel and Corporate Secretary

ATTEST:

Countersigned:

Equiniti Trust Company, as Warrant Agent

OR

By: _____
Authorized Agent

Equiniti Trust Company, as Warrant Agent

By: _____
as Countersigning Agent

By: _____
Authorized Officer

[Reverse of Warrant Certificate]

CHESAPEAKE ENERGY CORPORATION

WARRANT CERTIFICATE

EVIDENCING

CLASS B WARRANTS TO PURCHASE COMMON STOCK

The Class B Warrants evidenced hereby are one of a duly authorized issue of Warrants of the Company designated as its Warrants to Purchase Common Shares ("**Warrants**"), limited in aggregate number to 12,345,679 initially issued under and in accordance with the Warrant Agreement, dated as of February 9, 2021 (the "**Warrant Agreement**"), between the Company and Equiniti Trust Company, as warrant agent (the "**Warrant Agent**", which term includes any successor thereto permitted under the Warrant Agreement), to which the Warrant Agreement and all amendments thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Warrant Agent, the Warrantholders of Warrant Certificates and the owners of the Warrants evidenced thereby and of the terms upon which the Warrant Certificates are, and are to be, countersigned and delivered. A copy of the Warrant Agreement shall be available at all reasonable times at the office of the Warrant Agent for inspection by the Warrantholder hereof.

Except as provided in the Warrant Agreement, all outstanding Warrants shall expire and all rights of the Warrantholders of Warrant Certificates evidencing such Warrants shall terminate and cease to exist, as of the earlier of (i) 5:00 p.m., New York time, on February 9, 2026 and (ii) the date of consummation of any Liquidity Event (the "**Expiration Time**").

If fewer than all the Warrants represented by a Warrant Certificate are exercised, [the Warrant Agent shall endorse the "Schedule of Decreases of Warrants" attached to the Global Warrant Certificate to reflect the Warrants being exercised.][6] [such Definitive Warrant Certificate shall be surrendered and a new Definitive Warrant Certificate of the same tenor and class and for the number of Warrants which were not exercised shall be executed by the Company upon the written order of the Warrantholder of this Warrant Certificate upon the cancellation hereof.][7]

The Warrant Certificates are issuable only in registered form in denominations of whole numbers of Warrants. Upon surrender at the office of the Warrant Agent and payment of the charges specified herein and in the Warrant Agreement, this Warrant Certificate may be exchanged for Warrant Certificates in other authorized denominations or the Transfer hereof may be registered in whole or in part in authorized denominations to one or more designated Transferees; provided, however, that such other Warrant Certificates issued upon exchange or registration of Transfer shall evidence the same aggregate number and class of Warrants as this Warrant Certificate. The Company shall cause to be kept at the office of the Warrant Agent the

[6] Include only on Global Warrant Certificate.

[7] Include only on Definitive Warrant Certificates.

Warrant Register in which, subject to such reasonable regulations as the Warrant Agent may prescribe and such regulations as may be prescribed by Law, the Company shall provide for the registration of Warrant Certificates and of Transfers or exchanges of Warrant Certificates. Issuance of the Warrant Certificates evidencing Warrants and issuance of Common Shares upon the exercise of the Warrants shall be made without charge for any documentary, stamp or similar issue or transfer tax or other incidental expense in respect of the issuance thereof, all of which taxes and expenses shall be paid by the Company; provided, however, the Company shall not be required to pay any tax that may be payable in respect of any Transfer involved in the issuance and delivery of Warrant Certificates evidencing such Warrants or Common Shares in book-entry form or any certificates for Common Shares or payment of cash or other property in a name or to any Person other than the Warrantholder of the Warrant Certificate surrendered upon exercise or Transfer, and the Company shall not be required to issue or deliver Warrant Certificates or Common Shares in book-entry form or any certificates for Common Shares or payment of cash or other property, as applicable, unless and until the Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have reasonably determined that such tax has been paid.

Prior to due presentment of this Warrant Certificate for registration of Transfer, the Company, the Warrant Agent and any agent of the Company or the Warrant Agent may treat the Person in whose name this Warrant Certificate is registered as the owner hereof for all purposes, and neither the Company, the Warrant Agent nor any such agent shall be affected by notice to the contrary.

The Warrant Agreement permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Warrantholders of Warrant Certificates under the Warrant Agreement at any time by the Company and the Warrant Agent with the consent of the Required Warrantholders.

Nothing contained in the Warrant Agreement or this Warrant Certificate shall be construed as conferring upon any Person, by virtue in and of itself of holding a Warrant Certificate evidencing any Warrant or having a beneficial interest in a Warrant, the right to vote, receive any dividend or other distribution, receive notice of, or attend, any meeting of stockholders or otherwise exercise any rights whatsoever, in each case, as a stockholder of the Company to the extent such vote, dividend, giving of notice, meeting or other exercise of rights (or, if applicable, the relevant Record Date therefor) precedes the Close of Business on the Exercise Date with respect to the exercise of such Warrant. No Warrantholder shall have any right not expressly conferred hereunder or under, or by applicable Law with respect to, the Warrant Certificate held by such holder.

This Warrant Certificate, each Warrant evidenced thereby and the Warrant Agreement shall be governed by and construed in accordance with the Laws of the State of New York.

All terms used in this Warrant Certificate which are defined in the Warrant Agreement shall have the meanings assigned to them in the Warrant Agreement. In the event of any conflict between this Warrant Certificate and the Warrant Agreement, the Warrant Agreement shall control.

Form of Exercise

[Address]

Attention:

Re: Warrant Agreement dated as of February 9, 2021 between Chesapeake Energy Corporation (the "**Company**") and Equiniti Trust Company, as Warrant Agent (as it may be supplemented or amended, the "**Warrant Agreement**")

The undersigned hereby irrevocably elects to exercise the right to exercise ____ Warrants and receive the consideration deliverable in exchange therefor pursuant to the following settlement method (check one):

Cash Settlement

Cashless Settlement

If Cash Settlement is elected, the undersigned shall tender payment of the Exercise Price therefor in accordance with instructions received from the Warrant Agent.

Please check below if this exercise is contingent upon a Liquidity Event in accordance with Section 3.2(e) of the Warrant Agreement.

This exercise is being made in connection with a Liquidity Event; provided, that in the event that such transaction shall not be consummated, then this exercise shall be deemed revoked.

THIS EXERCISE NOTICE MUST BE DELIVERED TO THE WARRANT AGENT PRIOR TO THE EXPIRATION TIME. THE WARRANT AGENT SHALL NOTIFY YOU OF THE ADDRESS AND PHONE NUMBER WHERE YOU CAN CONTACT THE WARRANT AGENT AND TO WHICH WARRANT EXERCISE NOTICES ARE TO BE SUBMITTED.

All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Warrant Agreement.

Dated: _____

_____
(Insert Social Security or Other Identifying Number of Warrantholder)

Name: _____
(Please Print)

Address: _____

_____

_____
Signature

(Signature must conform in all respects to name of Warrantholder as specified on the face of this Warrant Certificate and must bear a signature guarantee by a bank, trust company or member firm of a U.S. national securities exchange.)

Signature Guaranteed:

Instructions (i) as to denominations and names of Common Shares issuable upon exercise and as to delivery of such securities and any other property issuable upon exercise and (ii) if applicable, as to Warrant Certificates evidencing unexercised Warrants:

Assignment

(Form of Assignment To Be Executed If Warrantholder Desires To Transfer Warrant Certificate)

FOR VALUE RECEIVED _____ hereby sells, assigns and transfers unto

Please insert social security or
other identifying number

(Please print name and address including zip code)

the Warrants represented by the within Warrant Certificate and does hereby irrevocably constitute and appoint _____ Attorney, to transfer said Warrant Certificate on the books of the within-named Company with full power of substitution in the premises.

Dated: _____ Signature _____

(Signature must conform in all respects to name of Warrantholder as specified on the face of this Warrant Certificate and must bear a signature guarantee by a bank, trust company or member firm of a U.S. national securities exchange.)

[SCHEDULE A]

SCHEDULE OF DECREASES IN WARRANTS

The following decreases in the number of Warrants evidenced by this Global Warrant Certificate have been made:

Date	Amount of decrease in number of Warrants evidenced by this Global Warrant Certificate	Number of Warrants evidenced by this Global Warrant following such decrease	Signature of authorized signatory][8]

[8] Include only on Global Warrant Certificate.

EXHIBIT B

FORM OF EXERCISE NOTICE

[Address]

Attention: Transfer Department

Re: Warrant Agreement dated as of February 9, 2021 between Chesapeake Energy Corporation (the "**Company**") and Equiniti Trust Company, as Warrant Agent (as it may be supplemented or amended, the "**Warrant Agreement**").

The undersigned hereby irrevocably elects to exercise the right to exercise ____ Warrants and receive the consideration deliverable in exchange therefor pursuant to the following settlement method (check one):

Cash Settlement

Cashless Settlement

If Cash Settlement is elected, the undersigned shall tender payment of the Exercise Price therefor in accordance with instructions received from the Warrant Agent.

Please check below if this exercise is contingent upon a Liquidity Event in accordance with Section 3.2(e) of the Warrant Agreement.

This exercise is being made in connection with a Liquidity Event; provided, that in the event that such transaction shall not be consummated, then this exercise shall be deemed revoked.

THIS EXERCISE NOTICE MUST BE DELIVERED TO THE WARRANT AGENT PRIOR TO THE EXPIRATION TIME. THE WARRANT AGENT SHALL NOTIFY YOU OF THE ADDRESS AND PHONE NUMBER WHERE YOU CAN CONTACT THE WARRANT AGENT AND TO WHICH WARRANT EXERCISE NOTICES ARE TO BE SUBMITTED.

All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Warrant Agreement.

Dated: _____

_____
(Insert Social Security or Other Identifying Number of Warrantholder)

Name: _____
(Please Print)

Address: _____

_____

_____
Signature

(Signature must conform in all respects to name of Warrantholder as specified on the face of this Warrant Certificate and must bear a signature guarantee by a bank, trust company or member firm of a U.S. national securities exchange.)

Signature Guaranteed:

Instructions (i) as to denominations and names of Common Shares issuable upon exercise and as to delivery of such securities and any other property issuable upon exercise and (ii) if applicable, as to Warrant Certificates evidencing unexercised Warrants:

EXHIBIT C

Fee Schedule

The Company shall pay the Warrant Agent for performance of its services under this Warrant Agreement such compensation as shall be agreed in writing between the Company and the Warrant Agent.

Exhibit 10.5

WARRANT AGREEMENT

dated as of February 9, 2021 between

CHESAPEAKE ENERGY CORPORATION

and

EQUINITI TRUST COMPANY

as Warrant Agent

Class C Warrants to Purchase Common Shares

TABLE OF CONTENTS

WARRANT AGREEMENT

Warrant Agreement (as it may be amended from time to time, this "**Warrant Agreement**"), dated as of February 9, 2021, between Chesapeake Energy Corporation, an Oklahoma corporation (the "**Company**"), and Equiniti Trust Company, as warrant agent (the "**Warrant Agent**").

WHEREAS, pursuant to the Joint Plan of Reorganization (the "**Plan**") of the Company and certain of its debtor affiliates under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**") approved by the United States Bankruptcy Court for the Southern District of Texas, Houston Division, certain warrants (the "**Warrants**") to purchase Common Shares (as defined herein) of the Company shall be issued;

WHEREAS, the Warrants and the Common Shares underlying the Warrants have been offered and sold in reliance on the exemption from the registration requirements of the Securities Act and any applicable state securities or "blue sky" laws afforded by Section 1145(a) of the Bankruptcy Code; and

WHEREAS, the Company desires that the Warrant Agent act on behalf of the Company and the Warrant Agent is willing to act, in connection with the issuance, exchange, Transfer (as defined below), substitution and exercise of Warrants.

NOW THEREFORE in consideration of the mutual agreements herein contained, the Company and the Warrant Agent agree as follows.

ARTICLE 1

DEFINITIONS

Section 1.1 Certain Definitions.

"**Affiliate**" shall mean, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such first specified Person. For the purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"**Agent Members**" has the meaning set forth in Section 2.4(b) hereof.

"**Alternative Securities Exchange**" means, excluding any National Securities Exchange, any other securities exchange or over-the-counter quotation system, including, without limitation, the NYSE MKT, the Nasdaq Capital Market, any quotation or other listing service provided by the OTC Markets Group or the Financial Industry Regulatory Authority, Inc., any "pink sheet" or other alternative listing service or any successor or substantially equivalent service to any of the foregoing.

"**Applicable Procedures**" means, with respect to any Transfer or exchange of, or exercise of any Warrants evidenced by, any Global Warrant Certificate, the rules and procedures of the Depositary that apply to such Transfer, exchange or exercise.

"**Authentication Order**" means a Company Order for authentication and delivery of Warrants.

"**Authorized Share Failure**" has the meaning set forth in Section 3.10 hereof.

"**Bankruptcy Code**" has the meaning set forth in the Recitals.

"**Beneficial Owner**" means any Person beneficially owning an interest in a Global Warrant, which interest is credited to the account of a direct participant in the Depository for the benefit of such Person through the book-entry system maintained by the Depository (or its agent). For the avoidance of doubt, any direct participant of the Depository may also be a Beneficial Owner.

"**Board**" means the board of directors of the Company from and after the Plan Effective Date.

"**Business Day**" means any day other than a Saturday, a Sunday, a day which is a legal holiday in the State of New York, or a day on which banking institutions and trust companies in the State of New York are authorized or obligated by Law, regulation or executive order to close.

"**Cash Settlement**" means the settlement method pursuant to which an Exercising Owner shall be entitled to receive from the Company, for each Warrant exercised, a number of fully paid and nonassessable Common Shares equal to the Cash Settlement Share Amount in exchange for payment in cash by the Exercising Owner of the applicable Exercise Price for each such Common Share so receivable upon exercise of such Warrant.

"**Cash Settlement Share Amount**" means, for each Warrant exercised as to which Cash Settlement is applicable, one fully paid and nonassessable Common Share, subject to adjustment in accordance with Article 4.

"**Cashless Settlement**" means the settlement method pursuant to which an Exercising Owner shall be entitled to receive from the Company, for each Warrant exercised, a number of Common Shares equal to the Cashless Settlement Share Amount without any payment of cash therefor.

"**Cashless Settlement Share Amount**" means for each Warrant exercised as to which an exercising owner elects Cashless Settlement, one fully paid and nonassessable Common Share, subject to adjustment in accordance with Article 4, *multiplied* by a fraction equal to (i) the Fair Market Value (as of the Exercise Date for such Warrant) of one Common Share minus the Exercise Price therefor *divided* by (ii) such Fair Market Value. The number of Common Shares issuable upon exercise, on the same Exercise Date, of Warrants as to which Cashless Settlement is applicable shall be aggregated for each Warrantholder, together with cash in lieu of any fractional Common Share, as provided in Section 3.6. In no event shall the Company deliver a fractional Common Share in connection with an exercise of Warrants as to which Cashless Settlement is applicable.

"**Class C Warrants**" has the meaning set forth in Section 2.1(a).

"**Close of Business**" means 5:00 p.m., New York City time.

"**Closing Date**" means the Plan Effective Date.

"**Common Shares**" means shares of the common stock, par value $0.01 per share, of the Company issued on or after the Plan Effective Date.

"**Company**" has the meaning set forth in the Preamble.

"**Company Order**" means a written request or order signed in the name of the Company by any two officers, at least one of whom must be its Chief Executive Officer, Chief Financial Officer, its Treasurer, any Assistant Treasurer, its Secretary or any Assistant Secretary, and delivered to the Warrant Agent.

"**Convertible Security**" means any Specified Convertible Security issued by the Company that is convertible into, or exercisable or exchangeable for, directly or indirectly, Common Shares.

"**Corporate Agency Office**" has the meaning set forth in Section 2.5(a) hereof.

"**Countersigning Agent**" means any Person authorized by the Warrant Agent to act on behalf of the Warrant Agent to countersign Warrant Certificates.

"**Definitive Warrant Certificate**" means a Warrant Certificate registered in the name of the Warrantholder thereof that does not bear the Global Warrant Legend and that does not have a "Schedule of Decreases of Warrants" attached thereto.

"**Depositary**" means DTC and its successors as depositary hereunder.

"**DTC**" means The Depository Trust Company.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended from time to time, and the related rules and regulations promulgated thereunder.

"**Exempt Transaction**" shall mean a merger, reorganization or consolidation that results in the voting securities of the Company outstanding immediately prior thereto continuing to represent immediately following such merger, reorganization or consolidation (either by remaining outstanding or by being converted into voting securities of the surviving entity or the ultimate parent company of such surviving entity) more than 50% of the combined voting power of the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation (or the ultimate parent company of the Company or such surviving entity).

"**Exercise Date**" has the meaning set forth in Section 3.2(d).

"**Exercise Notice**" means, for any Warrant, an exercise notice substantially in the form set forth in Exhibit B hereto.

"**Exercising Owner**" means any Warrantholder that exercises Warrants pursuant to the terms hereof.

"**Exercise Price**" means $36.18, subject to adjustment as provided in Article 4.

"**Expiration Time**" means the earlier of (i) the Close of Business on February 9, 2026 and (ii) the date of consummation of any Liquidity Event.

"**Fair Market Value,**" as of a specified date, means the price per Common Share or per unit of other Securities or other distributed property determined as follows:

(i) in the case of Common Shares or other Securities listed on a National Securities Exchange, the VWAP of a Common Share or a single unit of such other Security for the 10 Trading Days immediately preceding the specified date (or if the Common Shares or other Securities have been listed for less than 10 Trading Days, the VWAP for such lesser period of time);

(ii) in the case of Common Shares or other Securities listed on an Alternative Securities Exchange, the VWAP of a Common Share or a single unit of such other Security in composite trading for the principal U.S. national or regional securities exchange on which such Securities are then listed for the 10 Trading Days immediately preceding the specified date (or if the Common Shares or other Securities have been listed for less than 10 Trading Days, the VWAP for such lesser period of time);

(iii) in the case of Common Shares or other Securities that are publicly traded but are not listed on a National Securities Exchange or an Alternative Securities Exchange, the average of the reported bid and ask prices of a Common Share or a single unit of such other Security in the over-the-counter market on which such Securities are then traded for the 10 Trading Days immediately preceding the specified date (or if the Common Shares or other Securities have been publicly traded (but not listed) for less than 10 Trading Days, the average of the reported bid and ask prices for such lesser period of time); or

(iv) in all other cases, the Fair Market Value per Common Share or per unit of other Securities or other distributed property as of a date not earlier than 20 Business Days preceding the specified date as reasonably determined in good faith by the Board.

For the avoidance of doubt, no third party appraisal shall be required in connection with any Warrant that is exercised using Cashless Settlement.

"**Fundamental Equity Change**" has the meaning set forth in Section 4.5(a) hereof.

"**Funds**" has the meaning set forth in Section 3.2(f) hereof.

"**Funds Account**" has the meaning set forth in Section 3.2(f) hereof.

"**Global Warrant Certificate**" means a Warrant Certificate deposited with or on behalf of and registered in the name of the Depositary or its nominee, that bears the Global Warrant Legend and that has the "Schedule of Decreases of Warrants" attached thereto.

"**Global Warrant Legend**" means the legend set forth in Section 2.4(a).

"**Law**" means any federal, state, local, foreign or provincial law, statute, ordinance, rule, regulation, judgment, order, injunction, decree or agency requirement having the force of law or any undertaking to or agreement with any governmental authority, including common law.

"**Liquidity Event**" means any transaction or series of related transactions that results in (a) a merger, consolidation or combination involving the Company, (b) the sale or exchange of all or substantially all of the equity interests of the Company to one or more third parties (whether by merger, sale, recapitalization, consolidation, combination or otherwise) or (c) the sale, directly or indirectly, by the Company of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole; provided that, in each case, the closing or other consummation of such Liquidity Event occurs on or prior to February 9, 2026; provided further, however that notwithstanding the foregoing, no Exempt Transaction shall be a Liquidity Event.

"**Management Incentive Plan**" has the meaning set forth in the Plan.

"**National Securities Exchange**" means The New York Stock Exchange, The Nasdaq Global Select Market or The Nasdaq Global Market.

"**Person**" means an individual, partnership, firm, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

"**Plan**" has the meaning set forth in the Recitals.

"**Plan Effective Date**" means the effective date of the Plan as defined therein.

"**Recipient**" has the meaning set forth in Section 3.2(c) hereof.

"**Record Date**" means (i) with respect to any dividend, distribution, recapitalization, reclassification, split, reverse split, reorganization, consolidation, merger or other transaction or event in which the holders of Common Shares have the right to receive any cash, Securities or other property or in which Common Shares (or another applicable Security) are exchanged for or converted into, any combination of, cash, Securities or other property, the date fixed for determination of holders of Common Shares entitled to receive such cash, Securities or other property or participate in such exchange or conversion (whether such date is fixed by the Board or by statute, contract or otherwise) or (ii) with respect to any redemption or repurchase of Common Shares or Convertible Securities by the Company, the date on which the Company agrees to such redemption or repurchase (if such date precedes the date on which the Company effects such redemption or repurchase).

"**Reference Property**" has the meaning set forth in Section 4.6(a) hereof.

"**Reorganization Event**" has the meaning set forth in Section 4.6(a) hereof.

"**Required Warrantholders**" means Warrantholders holding at least 50.01% of the then-outstanding Warrants.

"**Securities**" means (i) any capital stock (whether common or preferred, voting or nonvoting), partnership, membership or limited liability company interest or other equity or voting interest, (ii) any right, option, warrant (including the Warrants) or other security or evidence of indebtedness convertible into, or exercisable or exchangeable for, directly or indirectly, any interest described in clause (i) (each, a "Specified Convertible Security"), (iii) any notes, bonds, debentures, trust receipts and other obligations, instruments or evidences of indebtedness, and (iv) any other "securities," as such term is defined or determined under the Securities Act.

"**Securities Act**" means the Securities Act of 1933, as amended from time to time, and the related rules and regulations promulgated thereunder.

"**Settlement Date**" means, in respect of a Warrant that is exercised hereunder, (a) in all circumstances other than a Cashless Settlement where Fair Market Value has been determined by the Board pursuant to clause (vi) of the definition thereof, the third Business Day immediately following the Exercise Date for such Warrant, and (b) in the event of a Cashless Settlement where Fair Market Value has been determined by the Board pursuant to clause (iv) of the definition thereof, the third Business Day immediately following receipt by the Exercising Owner of notice of such Fair Market Value.

"**Specified Convertible Security**" has the meaning set forth in the definition of Securities.

"**Subsidiary**" means, as to any Person, any corporation, partnership, limited liability company or other organization, whether incorporated or unincorporated, of which at least a majority of the Securities or other interests having by their terms voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly beneficially owned or controlled by such party or by any one or more of its subsidiaries, or by such party and one or more of its subsidiaries.

"**Trading Day**" means each Monday, Tuesday, Wednesday, Thursday and Friday, other than any day on which Securities are not traded on the applicable securities exchange.

"**Transfer**" means, with respect to any Warrant, to directly or indirectly (whether by act, omission or operation of Law), sell, exchange, transfer, hypothecate, negotiate, gift, convey in trust, pledge, assign, encumber, or otherwise dispose of, or by adjudication of a Person as bankrupt, by assignment for the benefit of creditors, by attachment, levy or other seizure by any creditor (whether or not pursuant to judicial process), or by passage or distribution of Warrants under judicial order or legal process, carry out or permit the transfer or other disposition of, all of such Warrant.

"**Unit of Reference Property**" has the meaning set forth in Section 4.6(a) hereof.

"**VWAP**" means, for any Trading Day, the price for Securities (including Common Shares) determined by the daily volume-weighted average price per unit of such Securities for such Trading Day on the trading market on which such Securities are then listed or quoted, in each case, for the regular trading session (including any extensions thereof, without regard to pre-open or after hours trading outside of such regular trading session) as reported on a National Securities Exchange, or if such Securities are listed or quoted on an Alternative Securities Exchange, as reported by the Alternative Securities Exchange on which such Securities are then listed or quoted, whichever is applicable, as published by Bloomberg at 4:15 p.m., New York City time (or 15 minutes following the end of any extension of the regular trading session), on such Trading Day.

"**Warrant**" or "**Warrants**" means those certain warrants of the Company to purchase the Warrant Shares and which expire at the Expiration Time and are issued pursuant to this Warrant Agreement with the terms, conditions and rights set forth therein. Each Warrant shall entitle the Warrantholder of the Warrant or the Warrant Certificate evidencing such Warrant upon exercise to purchase one Common Share at the Exercise Price, subject to adjustment pursuant to Article 4, issued hereunder.

"**Warrant Agent**" has the meaning set forth in the Preamble.

"**Warrant Agreement**" has the meaning set forth in the Preamble.

"**Warrant Certificates**" means those certain warrant certificates evidencing the Warrants, substantially in the form of Exhibit A attached hereto, except that, in the case of a Definitive Warrant Certificate, such Warrant Certificate shall not bear the Global Warrant Legend and shall not have a "Schedule of Decreases of Warrants" attached thereto.

"**Warrant Register**" has the meaning set forth in Section 2.5(b).

"**Warrant Shares**" means each Common Share issuable upon the exercise of the Warrants.

"**Warrantholder**" means any Person in whose name at the time any Warrant or Warrant Certificate is registered upon the Warrant Register and, when used with respect to any Warrant Certificate, the Person in whose name such Warrant Certificate is registered in the Warrant Register.

ARTICLE 2

WARRANT CERTIFICATES

Section 2.1 Original Issuance of Warrants.

(a) On the Closing Date, one or more Global Warrant Certificates evidencing the Warrants equal to 13,717,420 Class C Warrants (the "**Class C Warrants**"), (each such Warrant to be subject to adjustment from time to time as described herein), in accordance with the terms of this Warrant Agreement and the Plan, shall be executed by the Company and delivered to the Warrant Agent for countersignature, along with an Authentication Order, and the Warrant Agent shall countersign and deliver such Global Warrant Certificates for issuance to the Depositary, or its custodian, for crediting to the

accounts of its participants for the benefit of the Warrantholders, as the Beneficial Owners of the Warrants, pursuant to the Applicable Procedures of the Depositary on the Closing Date. Each Warrant Certificate shall evidence the number of Warrants specified therein, and each Warrant evidenced thereby shall represent the right, subject to the provisions contained herein and therein, to purchase one Common Share, subject to adjustment as provided in Article 4.

(b) Each Warrant shall be exercisable for one fully paid and nonassessable Common Share (subject to adjustment under Article 4) upon payment of the applicable Exercise Price for each such Common Share so receivable upon exercise of such Warrant and compliance with the procedures set forth in this Warrant Agreement. On the Closing Date, the Warrant Agent shall register all of the Warrants in the Warrant Register. The Warrants shall be dated as of the Closing Date and, subject to the terms hereof, shall be the only Warrants issued or outstanding under this Warrant Agreement as of the Closing Date.

(c) All Warrants issued under this Warrant Agreement shall in all respects be equally and ratably entitled to their respective benefits under this Warrant Agreement, without preference, priority, or distinction on account of the actual time of the issuance and authentication or any other terms thereof. Each Warrant shall be, and shall remain, subject to the provisions of this Warrant Agreement until such time as such Warrant shall have been duly exercised or shall have expired or been canceled in accordance with the terms hereof. Each Warrantholder shall be bound by all of the terms and provisions of this Warrant Agreement as fully and effectively as if such Warrantholder had signed the same.

Section 2.2 Form of Warrants. The Warrant Certificates evidencing the Warrants shall be in registered form only and substantially in the form attached hereto as Exhibit A, shall be dated the date on which countersigned by the Warrant Agent, shall have such insertions as are appropriate or required or permitted by this Warrant Agreement and may have such letters, numbers or other marks of identification and such legends and endorsements typed, stamped, printed, lithographed or engraved thereon as the officers of the Company executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Warrant Agreement, or as may be required to comply with any Law or with any rule or regulation pursuant thereto or with any rule or regulation of any securities exchange on which the Warrants may be listed, or to conform to usage.

Section 2.3 Execution and Delivery of Warrant Certificates.

(a) Warrant Certificates evidencing the Warrants which may be countersigned and delivered under this Warrant Agreement are limited to Warrant Certificates evidencing the Warrants except for Warrant Certificates countersigned and delivered upon registration of Transfer of, or in exchange for, or in lieu of, one or more previously countersigned Warrant Certificates pursuant to Section 2.4, Section 2.5, Section 2.8, and Section 3.2(b).

(b) The Warrant Agent is hereby authorized to countersign and deliver Warrant Certificates as required by Section 2.1, Section 2.4, Section 2.5, Section 2.8, and Section 3.2(b).

(c) The Warrant Certificates shall be executed in the corporate name and on behalf of the Company by the Chief Executive Officer or the Chief Financial Officer of the Company under corporate seal reproduced thereon and attested to by the Secretary or one of the Assistant Secretaries of the Company, either manually or by facsimile signature printed thereon. The Warrant Certificates shall be manually countersigned by the Warrant Agent and shall not be valid for any purpose unless so countersigned. In case any officer of the Company whose signature shall have been placed upon any of the Warrant Certificates shall cease to be such officer of the Company before countersignature by the Warrant Agent and issue and delivery thereof, such Warrant Certificates may, nevertheless, be countersigned by the Warrant Agent and issued and delivered with the same force and effect as though such person had not ceased to be such officer of the Company, and any Warrant Certificate may be signed on behalf of the Company by such person as, at the actual date of the execution of such Warrant Certificate, shall be a proper officer of the Company, although at the date of the execution of this Warrant Agreement any such person was not such officer.

Section 2.4 Global Warrant Certificates.

(a) Any Global Warrant Certificate shall bear the legend substantially in the form set forth in Exhibit A hereto (the "**Global Warrant Legend**").

(b) So long as a Global Warrant Certificate is registered in the name of the Depositary or its nominee, members of, or participants in, the Depositary ("**Agent Members**") shall have no rights under this Warrant Agreement with respect to the Warrants evidenced by such Global Warrant Certificate held on their behalf by the Depositary or its custodian, and the Depositary may be treated by the Company, the Warrant Agent and any agent of the Company or the Warrant Agent as the absolute owner of such Warrants, and as the sole Warrantholder of such Warrant Certificate, for all purposes. Accordingly, any such Agent Member's beneficial interest in such Warrants will be shown only on, and the Transfer of such interest shall be effected only through, records maintained by the Depositary or its nominee or its Agent Members, and neither the Company nor the Warrant Agent shall have any responsibility or liability with respect to such records maintained by the Depositary or its nominee or its Agent Members. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Warrant Agent or any agent of the Company or the Warrant Agent from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and its Agent Members, the operation of customary practices governing the exercise of the rights of a holder of any security.

(c) Any Beneficial Owner of Warrants evidenced by a Global Warrant Certificate registered in the name of the Depositary or its nominee shall, by acceptance of such beneficial interest, agree that Transfers of beneficial interests in the Warrants evidenced by such Global Warrant Certificate may be effected only through the book-entry system maintained by the Depositary as the Warrantholder of such Global Warrant

Certificate (or its agent), and that ownership of a beneficial interest in Warrants evidenced thereby shall be reflected solely in such book-entry form.

(d) Transfers of a Global Warrant Certificate registered in the name of the Depositary or its nominee shall be limited to Transfers in whole, and not in part, to the Depositary, its successors, and their respective nominees except as set forth in Section 2.4(e). Interests of Beneficial Owners in a Global Warrant Certificate registered in the name of the Depositary or its nominee shall be Transferred in accordance with the Applicable Procedures of the Depositary.

(e) A Global Warrant Certificate registered in the name of the Depositary or its nominee shall be exchanged for Definitive Warrant Certificates only if the Depositary (i) has notified the Company that it is unwilling or unable to continue as or ceases to be a clearing agency registered under Section 17A of the Exchange Act and (ii) a successor to the Depositary registered as a clearing agency under Section 17A of the Exchange Act is not able to be appointed by the Company within 90 days or the Depositary is at any time unwilling or unable to continue as Depositary and a successor to the Depositary is not able to be appointed by the Company within 90 days. In any such event, a Global Warrant Certificate registered in the name of the Depositary or its nominee shall be surrendered to the Warrant Agent for cancellation in accordance with Section 3.12, and the Company shall execute, and the Warrant Agent shall countersign and deliver, to each Beneficial Owner identified by the Depositary, in exchange for such Beneficial Owner's beneficial interest in such Global Warrant Certificate, Definitive Warrant Certificates evidencing, in the aggregate, the number of Warrants theretofore represented by such Global Warrant Certificate with respect to such Beneficial Owner's respective beneficial interest. Any Definitive Warrant Certificate delivered in exchange for an interest in a Global Warrant Certificate pursuant to this Section 2.4(e) shall not bear the Global Warrant Legend. Interests in any Global Warrant Certificate may not be exchanged for Definitive Warrant Certificates other than as provided in this Section 2.4(e).

(f) The Warrantholder of a Global Warrant Certificate registered in the name of the Depositary or its nominee may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Warrantholder of a Warrant Certificate is entitled to take under this Warrant Agreement or such Global Warrant Certificate.

(g) Each Global Warrant Certificate will evidence such of the outstanding Warrants as will be specified therein and each shall provide that it evidences the aggregate number of outstanding Warrants from time to time endorsed thereon and that the aggregate number of outstanding Warrants evidenced thereby may from time to time be reduced, to reflect exercises or expirations. Any endorsement of a Global Warrant Certificate to reflect the amount of any decrease in the aggregate number of outstanding Warrants evidenced thereby will be made by the Warrant Agent (i) in the case of an exercise, in accordance with the Applicable Procedures as required by Section 3.2(b) or (ii) in the case of an expiration, in accordance with Section 2.6.

(h) The Company initially appoints DTC to act as Depositary with respect to the Global Warrant Certificates.

(i) Every Warrant Certificate authenticated and delivered in exchange for, or in lieu of, a Global Warrant Certificate or any portion thereof, pursuant to this Section 2.4, Section 2.5(a), or Section 2.8, shall be authenticated and delivered in the form of, and shall be, a Global Warrant Certificate, and a Global Warrant Certificate may not be exchanged for a Definitive Warrant Certificate, in each case, other than as provided in Section 2.4(e). Whenever any provision herein refers to issuance by the Company and countersignature and delivery by the Warrant Agent of a new Warrant Certificate in exchange for the portion of a surrendered Warrant Certificate that has not been exercised, in lieu of the surrender of any Global Warrant Certificate and the issuance, countersignature and delivery of a new Global Warrant Certificate in exchange therefor, the Warrant Agent may endorse such Global Warrant Certificate to reflect a reduction in the number of Warrants evidenced thereby in the amount of Warrants so evidenced that have been so exercised.

(j) Beneficial interests in any Global Warrant Certificate may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Global Warrant Certificate in accordance with the Applicable Procedures.

(k) At such time as all Warrants evidenced by a particular Global Warrant Certificate have been exercised or expired in whole and not in part, such Global Warrant Certificate shall, if not in custody of the Warrant Agent, be surrendered to or retained by the Warrant Agent for cancellation in accordance with Section 3.12.

Section 2.5 Registration, Transfer, Exchange and Substitution.

(a) The Warrant Agent will maintain an office (the "**Corporate Agency Office**") in the United States of America, where Warrant Certificates may be surrendered for registration of Transfer or exchange and where Warrant Certificates may be surrendered for exercise of Warrants evidenced thereby, which office is EQ Shareowner Services, P.O. Box 64874, St. Paul, MN 55164 on the Closing Date. The Warrant Agent will give prompt written notice to all Warrantholders of any change in the location of such office.

(b) The Warrant Certificates evidencing the Warrants shall be issued in registered form only. The Company shall cause to be kept at the office of the Warrant Agent designated for such purpose a warrant register (the "**Warrant Register**") in which, subject to such reasonable regulations as the Warrant Agent may prescribe and such regulations as may be prescribed by Law, the Company shall provide for the registration of Warrant Certificates and of Transfers or exchanges of Warrant Certificates as herein provided.

(c) Upon surrender for registration of Transfer of any Warrant Certificate at the Corporate Agency Office, the Company shall execute, and the Warrant Agent shall countersign and deliver, in the name of the designated Transferee or Transferees, one or more new Warrant Certificates evidencing a like aggregate number of Warrants.

(d) At the option of the Warrantholder, Warrant Certificates may be exchanged at the office of the Warrant Agent upon payment of the charges hereinafter provided for other Warrant Certificates evidencing a like aggregate number of Warrants. Whenever any Warrant Certificates are so surrendered for exchange, the Company shall

execute, and the Warrant Agent shall countersign and deliver, the Warrant Certificates of the same tenor and evidencing the same number of Warrants as evidenced by the Warrant Certificates surrendered by the Warrantholder making the exchange.

(e) All Warrant Certificates issued upon any registration of Transfer or exchange of, or in lieu of, Warrant Certificates shall be the valid obligations of the Company, evidencing the same obligations, and entitled to the same benefits under this Warrant Agreement, as the Warrant Certificates surrendered for such registration of Transfer or exchange or substitution.

(f) Every Warrant Certificate surrendered for registration of Transfer or exchange shall (if so required by the Company or the Warrant Agent) be duly endorsed, or be accompanied by a written instrument of Transfer in form satisfactory to the Company and the Warrant Agent, duly executed by the Warrantholder thereof or his attorney duly authorized in writing.

(g) No service charge shall be made for any registration of Transfer or exchange of Warrant Certificates; provided, however, to the extent provided in the proviso to Section 3.11, the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of Transfer or exchange of Warrant Certificates.

(h) The Warrant Agent shall, upon request of the Company from time to time, deliver to the Company such reports of registered ownership of the Warrants and such records of transactions with respect to the Warrants and the Common Shares as the Company may request. The Warrant Agent shall also make available to the Company for inspection by the Company's agents or employees, from time to time as the Company may request, such original books of accounts and records maintained by the Warrant Agent in connection with the issuance and exercise of Warrants hereunder, such inspections to occur at the Corporate Agency Office during normal business hours.

(i) The Warrant Agent shall keep copies of this Warrant Agreement and any notices given to Warrantholders hereunder available for inspection by the Warrantholders during normal business hours at the Corporate Agency Office. The Company shall supply the Warrant Agent from time to time with such numbers of copies of this Warrant Agreement as the Warrant Agency may request.

(j) Transfers of the Warrant Certificates evidencing Warrants shall be subject only to the terms of this Warrant Agreement and applicable securities Laws. The Warrant Agent shall register the Transfer, from time to time, of any outstanding Warrant Certificates evidencing Warrants upon the Warrant Register, upon delivery of a duly executed assignment, in the form attached hereto as Exhibit A, and accompanied by appropriate instructions for Transfer. No such Transfer shall be effected until, and the Transferee shall succeed to the rights of the holder thereof only upon, final acceptance and registration of the Transfer in the Warrant Register by the Warrant Agent. Prior to the registration of any Transfer of a Warrant Certificate evidencing a Warrant as provided herein, the Company, the Warrant Agent, and any agent of the Company or the Warrant Agent may treat the Person in whose name such Warrant Certificate is registered as the owner thereof and of the Warrants evidenced thereby for all purposes, notwithstanding

any notice to the contrary. Subject to Section 3.11, no service charge, tax or governmental payment shall be required of any Transferor or Transferee in connection with any such Transfer or registration of Transfer. A party requesting Transfer of a Warrant Certificate evidencing a Warrant must provide reasonable and customary evidence of authority if requested by the Warrant Agent.

Section 2.6 Cancellation of the Warrants. Any Warrants outstanding as of the Expiration Time shall be automatically cancelled without any further action on the part of the Warrant Agent or any other Person.

Section 2.7 CUSIP Numbers. In issuing the Warrants, the Company will use a "CUSIP" number. The Warrant Agent will use CUSIP numbers in notices to Warrantholders. The Company will promptly notify the Warrant Agent in writing of any change in the CUSIP numbers.

Section 2.8 Loss or Mutilation.

(a) If (i) any mutilated Warrant Certificate is surrendered to the Warrant Agent or (ii) both (A) there shall be delivered to the Company and the Warrant Agent (x) a claim by a Warrantholder as to the destruction, loss or wrongful taking of any Warrant Certificate of such Warrantholder and a request thereby for a new replacement Warrant Certificate, and (y) such indemnity bond as may be required by them to save each of them and any agent of either of them harmless and (B) such other reasonable requirements as may be imposed by the Company as permitted by Section 8-405 of the Uniform Commercial Code have been satisfied, then, in the absence of notice to the Company or the Warrant Agent that such Warrant Certificate has been acquired by a "protected purchaser" within the meaning of Section 8-405 of the Uniform Commercial Code, the Company shall execute and upon its written request the Warrant Agent shall countersign and deliver to the registered Warrantholder of the lost, wrongfully taken, destroyed or mutilated Warrant Certificate, in exchange therefore or in lieu thereof, a new Warrant Certificate of the same tenor and for a like aggregate number of Warrants and of the same class.

(b) Upon the issuance of any new Warrant Certificate under this Section 2.8, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and other expenses (including the fees and expenses of the Warrant Agent and of counsel to the Company) in connection therewith.

(c) Every new Warrant Certificate executed and delivered pursuant to this Section 2.8 in lieu of any lost, wrongfully taken or destroyed Warrant Certificate shall constitute an additional contractual obligation of the Company, whether or not the allegedly lost, wrongfully taken or destroyed Warrant Certificate shall be at any time enforceable by anyone, and shall be entitled to the benefits of this Warrant Agreement equally and proportionately with any and all other Warrant Certificates duly executed and delivered hereunder.

(d) The provisions of this Section 2.8 are exclusive and shall preclude (to the extent lawful) all other rights or remedies with respect to the replacement of mutilated, lost, wrongfully taken, or destroyed Warrant Certificates.

ARTICLE 3

EXERCISE AND SETTLEMENT OF WARRANTS

Section 3.1 Right to Acquire Common Shares Upon Exercise. Each Warrant Certificate shall, when countersigned by the Warrant Agent, entitle the Warrantholder thereof, subject to the provisions thereof and of this Warrant Agreement, to acquire from the Company, for each Warrant evidenced thereby one Common Share at the Exercise Price, subject to adjustment as provided in this Warrant Agreement. The Exercise Price, and the number of Common Shares obtainable upon exercise of each Warrant, shall be adjusted from time to time as required by Article 4.

Section 3.2 Exercise Procedures for Warrants.

(a) In order to exercise all or any of the Warrants represented by a Warrant Certificate, the Warrantholder thereof must:

(i) (x) in the case of a Global Warrant Certificate, provide to the Warrant Agent at the Corporate Agency Office a duly completed and executed Exercise Notice as to the number of Warrants being exercised and, if applicable, whether Cashless Settlement is being elected with respect thereto, and deliver such Warrants by book-entry transfer through the facilities of the Depositary, to the Warrant Agent in accordance with the Applicable Procedures and otherwise comply with the Applicable Procedures in respect of the exercise of such Warrants or (y) in the case of a Definitive Warrant Certificate, at the Corporate Agency Office (A) surrender to the Warrant Agent the Warrant Certificate evidencing such Warrants and (B) deliver to the Warrant Agent a duly completed and executed Exercise Notice as to the Warrantholder's election to exercise the number of the Warrants specified therein and, if applicable, whether Cashless Settlement is being elected with respect thereto, duly executed by such Warrantholder; and

(ii) pay to the Warrant Agent an amount equal to (x) those applicable taxes and charges required to be paid by the Warrantholder, if any, pursuant to Section 3.11 (with all other taxes and charges being the responsibility of the Company pursuant to the first clause of Section 3.11) prior to, or concurrently with, exercise of such Warrants and (y) except in the case of a Cashless Settlement, the aggregate of the Exercise Price in respect of each Common Share into which such Warrants are exercisable, in case of (x) and (y), by wire transfer in immediately available funds, to the account (657601568) of the Company at J P Morgan Chase Bank, N.A. or such other account of the Company at such banking institution as the Company shall have given notice to the Warrant Agent and such Warrantholder in accordance with Section 6.14.

(b) If fewer than all the Warrants represented by a Warrant Certificate are exercised, (i) in the case of exercise of Warrants evidenced by a Global Warrant Certificate, the Warrant Agent shall endorse the "Schedule of Decreases of Warrants" attached to such Global Warrant Certificate to reflect the Warrants being exercised and (ii) in the case of exercise of Warrants evidenced by a Definitive Warrant Certificate, such Definitive Warrant Certificate shall be surrendered and a new Definitive Warrant Certificate of the same tenor and for the number of Warrants which were not exercised shall be executed by the Company. The Warrant Agent shall countersign the new Definitive Warrant Certificate, registered in such name or names, subject to the provisions of Section 2.5 regarding registration of Transfer and Section 3.11 regarding payment of governmental charges in respect thereof, as may be directed in writing by the Warrantholder, and shall deliver the new Definitive Warrant Certificate to the Person or Persons in whose name such new Warrant Certificate is so registered. The Company, whenever required by the Warrant Agent, will supply the Warrant Agent with Definitive Warrant Certificates duly executed on behalf of the Company for such purpose.

(c) Upon due exercise of Warrants evidenced by any Warrant Certificate in conformity with the foregoing provisions of Section 3.2(a), the Warrant Agent shall, when actions specified in Section 3.2(a)(i) have been effected and any payment specified in Section 3.2(a)(ii) is received, deliver to the Company the Exercise Notice received pursuant to Section 3.2(a)(i), deliver or deposit all funds received as instructed in writing by the Company and advise the Company by telephone at the end of such day of the amount of funds so deposited to its account. The Company shall thereupon, as promptly as practicable, and in any event within five Business Days after the Exercise Date referred to below, (i) determine the number of Common Shares issuable pursuant to exercise of such Warrants pursuant to Section 3.3 or, if Cashless Settlement applies, Section 3.4 and (ii) (x) in the case of exercise of Warrants evidenced by a Global Warrant Certificate, deliver or cause to be delivered to the Recipient (as defined below) in accordance with the Applicable Procedures Common Shares in book-entry form to be so held through the facilities of DTC in an amount equal to, or, if the Common Shares may not then be held in book-entry form through the facilities of DTC, duly executed certificates representing, or (y) in the case of exercise of Warrants evidenced by Definitive Warrant Certificates, deliver or cause to be delivered to the Recipient (as defined below) Common Shares in book-entry form on the Common Share registrar maintained by the Warrant Agent for such purpose, or, at the election of the Warrantholder, duly executed certificates representing, in case of (x) and (y), the aggregate number of Common Shares issuable upon such exercise (based upon the aggregate number of Warrants so exercised), as so determined, together with an amount in cash in lieu of any fractional share(s) pursuant to Section 3.6. The Common Shares in book-entry form or certificate or certificates representing Common Shares so delivered shall be, to the extent possible, in such denomination or denominations as such Warrantholder shall request in the applicable notice of exercise and shall be registered or otherwise placed in the name of, and delivered to, the Warrantholder or, subject to Section 3.11, such other Person as shall be designated by the Warrantholder in such notice (the Warrantholder or such other Person being referred to herein as the "**Recipient**").

(d) The date on which all of the requirements for exercise set forth in this Section 3.2 in respect of a Warrant have been satisfied is the "**Exercise Date**" with respect to such Warrant (subject to Section 3.2(h)).

(e) Subject to Section 3.2(g) and Section 3.2(h), any exercise of a Warrant pursuant to the terms of this Warrant Agreement shall be irrevocable and enforceable in accordance with its terms.

(f) All funds received by the Warrant Agent under this Warrant Agreement that are to be distributed or applied by the Warrant Agent in the performance of services in accordance with this Warrant Agreement (the "**Funds**") shall be held by the Warrant Agent as agent for the Company and deposited in one or more bank accounts to be maintained by the Warrant Agent in its name as agent for the Company (the "**Funds Account**"). Until paid pursuant to the terms of this Warrant Agreement, the Warrant Agent will hold the Funds through the Funds Account in deposit accounts of commercial banks with Tier 1 capital exceeding $1 billion or with an average rating above investment grade by S&P (LT Local Issuer Credit Rating), Moody's (Long Term Rating) and Fitch Ratings, Inc. (LT Issuer Default Rating), each as reported by Bloomberg Finance L.P. The Warrant Agent shall have no responsibility or liability for any diminution of the Funds that may result from any deposit made by the Warrant Agent in accordance with this paragraph, including any losses resulting from a default by any bank, financial institution or other third party. The Warrant Agent may from time to time receive interest, dividends or other earnings in connection with such deposits.

(g) Prior to the delivery of any Common Shares upon exercise of a Warrant, the Company shall be obligated to comply with all applicable Laws which require action to be taken by the Company in connection with such delivery. The Company shall assist and cooperate with any Exercising Owner that is required to make any governmental filings or obtain any governmental approvals prior to or in connection with receipt of Common Shares upon any exercise of a Warrant (including, without limitation, making any filings required to be made by the Company), and any exercise of a Warrant by a Warrantholder may be made contingent by it upon the making of any such filing and the receipt of any such approval.

(h) Notwithstanding any other provision of this Warrant Agreement, if the exercise of any Warrant is to be made in connection with a Liquidity Event, such exercise may, at the election of the Exercising Owner, be conditioned upon consummation of such transaction or event, in which case such exercise shall not be deemed effective until the consummation of such transaction or event.

(i) The Warrant Agent shall forward funds deposited in the Funds Account in a given week by the fifth Business Day of the following week by wire transfer to an account designated by the Company.

(j) In the case of Cash Settlement, payment of the applicable aggregate Exercise Price by or on behalf of an Exercising Owner upon exercise of Warrants shall be by federal wire or other immediately available funds payable to the account maintained by the Warrant Agent in its name as agent for the Company. The Warrant Agent shall

provide an exercising Warrantholder, upon request, with the appropriate payment instructions.

Section 3.3 Shares Issuable. The number of Common Shares "obtainable upon exercise" of Warrants at any time shall be the number of Common Shares into which such Warrants are then exercisable. The number of Common Shares "into which each Warrant is exercisable" shall be one share, subject to adjustment as provided in Article 4.

Section 3.4 Settlement of Warrants.

(a) Warrants may be exercised using Cash Settlement or Cashless Settlement in accordance with this Article 3 at any time prior to the Expiration Time, either in full or from time to time in part.

(b) Cash Settlement shall apply to each Warrant unless the Exercising Owner elects for Cashless Settlement to apply upon exercise of such Warrant. Such election shall be made in the Exercise Notice for such Warrant.

(c) If Cash Settlement applies to the exercise of a Warrant, upon the proper and valid exercise thereof by an Exercising Owner, the Company shall cause to be delivered to the Exercising Owner, the Cash Settlement Share Amount on the Settlement Date.

(d) If Cashless Settlement applies to the exercise of a Warrant:

(i) The Warrantholder must (A) expressly state in its Exercise Notice its desire to effect a Cashless Settlement and (B) must provide the Exercise Notice to the Warrant Agent at the Corporate Agency Office.

(ii) Upon the proper and valid exercise thereof by an Exercising Owner, the Company shall cause to be delivered to the Exercising Owner, the Cashless Settlement Share Amount on the Settlement Date, together with cash in lieu of any fractional Common Share, as provided in Section 3.6.

Section 3.5 Delivery of Common Shares.

(a) In connection with the exercise of Warrants, the Warrant Agent shall:

(i) examine all Exercise Notices and all other documents delivered to it to ascertain whether, on their face, such Exercise Notices and any such other documents have been executed and completed in accordance with their terms;

(ii) where an Exercise Notice or other document appears on its face to have been improperly completed or executed or some other irregularity in connection with the exercise of the Warrant exists, endeavor to inform the appropriate parties (including the Person submitting such instrument) of the need for fulfillment of all requirements, specifying those requirements which appear to be unfulfilled;

(iii) inform the Company of and cooperate with and assist the Company in resolving any reconciliation problems between the Exercise Notices received and delivery of Warrants to the Warrant Agent's account;

(iv) advise the Company with respect to an exercise, as promptly as practicable following the satisfaction of each of the applicable procedures for exercise set forth in Section 3.2(a) of (v) the receipt of such Exercise Notice and the number of Warrants exercised in accordance with the terms and conditions of this Warrant Agreement, (w) the number of Common Shares to be delivered by the Company, (x) the instructions with respect to issuance of the Common Shares, (y) the number of Persons who will become holders of record of the Company (who were not previously holders of record) as a result of receiving Common Shares upon exercise of the Warrants and (z) such other information as the Company shall reasonably require;

(v) promptly deposit in the Funds Account all Funds received in payment of the applicable Exercise Price in connection with any Cash Settlement of Warrants;

(vi) provide to the Company, upon the Company's request, the number of Warrants previously exercised, the number of Common Shares issued in connection with such exercises and the number of remaining outstanding Warrants; and

(vii) provide to the Company, upon the Company's request, any Exercise Notices delivered pursuant to Section 3.2(a) and any documents delivered pursuant to Section 3.5(b)(i)(B).

(b) With respect to each properly exercised Warrant evidenced by any Warrant Certificate in accordance with this Warrant Agreement, (i) (x) in the case of exercise of Warrants evidenced by a Global Warrant Certificate, the Company shall deliver or cause to be delivered to the Recipient in accordance with the Applicable Procedures Common Shares in book-entry form to be so held through the facilities of DTC in an amount equal to, or, if the Common Shares may not then be held in book-entry form through the facilities of DTC, duly executed certificates representing, or (y) in the case of exercise of Warrants evidenced by Definitive Warrant Certificates, deliver or cause to be delivered to the Recipient Common Shares in book-entry form on the Common Share registrar maintained by the Warrant Agent for such purpose, or, at the election of the Warrantholder, duly executed certificates representing, in case of (x) or (y), the aggregate number of Common Shares issuable upon such exercise (based upon the aggregate number of Warrants so exercised) (A) unless clause (B) is applicable, for the benefit and in the name of the Warrantholder or (B) for the benefit and in the name of such Person (other than the Warrantholder) designated by the Warrantholder submitting the applicable Exercise Notice; and (ii) the Warrant Agent shall deliver such Common Shares to such Person pursuant to clause (i)(A) or (i)(B), as applicable. The Person on whose behalf and in whose name any Common Shares are registered shall for all purposes be deemed to have become the holder of record of such Common Shares as of the Close of Business on the applicable Exercise Date. The Company covenants that all Common Shares which may be issued upon exercise of Warrants will be, upon payment

of the Exercise Price and issuance thereof, fully paid and nonassessable, free of preemptive rights and (except as specified in the proviso to Section 3.11) free from all taxes, liens, charges and security interests with respect to the issuance thereof.

(c) Promptly after the Warrant Agent has taken the action required by this Section 3.5 (or at such later time as may be mutually agreeable to the Company and the Warrant Agent), the Warrant Agent shall account to the Company with respect to the consummation of any exercise of any Warrants.

Section 3.6 No Fractional Common Shares to Be Issued.

(a) Notwithstanding anything to the contrary in this Warrant Agreement, the Company shall not be required to issue any fraction of a Common Share upon exercise of any Warrants.

(b) If any fraction of a Common Share would, except for the provisions of this Section 3.6, be issuable on the exercise of any Warrants, the Company shall make a cash payment in lieu of issuing such fractional Common Share equal to the Fair Market Value of one Common Share, as determined on the date the Warrant is presented for exercise, multiplied by such fraction, rounded to the nearest whole cent. All Warrants exercised by a Warrantholder on the same Exercise Date shall be aggregated for purposes of determining the number of Common Shares to be delivered pursuant to Section 3.5(b).

(c) Each Warrantholder, by its acceptance of an interest in a Warrant, expressly waives its right to any fraction of a Common Share upon its exercise of such Warrant.

Section 3.7 Acquisition of Warrants by Company. The Company shall have the right, except as limited by Law, to purchase or otherwise to acquire one or more Warrants at such times, in such manner and for such consideration as agreed by the Company and the applicable Warrantholder.

Section 3.8 Validity of Exercise. All questions as to the validity, form and sufficiency (including time of receipt) of a Warrant exercise shall be determined by the Company in good faith in accordance with the terms of this Warrant Agreement and the Warrants, which determination, absent manifest error, shall be final and binding with respect to the Warrant Agent. The Warrant Agent shall incur no liability for or in respect of and, except to the extent such liability arises from the Warrant Agent's gross negligence, willful misconduct, actual fraud or material breach of this Warrant Agreement (as determined by a court of competent jurisdiction in a final non-appealable judgment) and shall be indemnified and held harmless by the Company for acting or refraining from acting upon, or as a result of, such determination by the Company. The Company reserves the absolute right to waive any of the conditions to the exercise of Warrants or defects in Exercise Notices with regard to any particular exercise of Warrants.

Section 3.9 Certain Calculations.

(a) The Warrant Agent shall be responsible for performing all calculations, except for the case of Cashless Settlements, required in connection with the exercise and settlement of the Warrants as described in this Article 3. In connection therewith, the

Warrant Agent shall provide prompt written notice to the Company, in accordance with Section 3.5(a)(iv), of the number of Common Shares deliverable upon exercise and settlement of Warrants. The Company shall be responsible for all calculations and determinations required in connection with any Cashless Settlements and shall provide written notification to the Warrant Agent of the Cashless Settlement Share Amount to be issued on the Settlement Date for any Cashless Settlement. The Warrant Agent shall not be responsible for performing the calculations set forth in Article 4.

(b) The Warrant Agent shall not be accountable with respect to the validity or value of any Common Shares that may at any time be issued or delivered upon the exercise of any Warrant, and it makes no representation with respect thereto. The Warrant Agent shall not be responsible, to the extent not arising from the Warrant Agent's gross negligence, willful misconduct or actual fraud (as determined by a court of competent jurisdiction in a final non-appealable judgment), for any failure of the Company to issue, transfer or deliver any Common Shares, or to comply materially with any of the covenants of the Company contained in this Article 3 of this Warrant Agreement.

Section 3.10 Reservation and Listing of Shares. The Company will at all times reserve and keep available, out of its authorized but unissued Common Shares, solely for the purpose of providing for the exercise of the Warrants, the aggregate number of Common Shares then issuable upon exercise of the Warrants at any time and shall take all action required to increase the authorized number of Common Shares if at any time there shall be insufficient authorized but unissued Common Shares to permit such reservation or to permit the exercise of a Warrant (an "**Authorized Share Failure**"). Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than 180 days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its stockholders for the approval of an increase in the number of authorized Common Shares. In connection with such meeting, the Company shall use its best efforts to solicit its stockholders' approval of such increase in authorized Common Shares and to cause its Board to recommend to the stockholders that they approve such proposal. The Company shall instruct the transfer agent to deliver to the Warrant Agent, upon written request from the Warrant Agent, stock certificates (or beneficial interests therein) required to honor outstanding Warrants upon exercise thereof in accordance with the terms of this Warrant Agreement. The Company will (A) procure, at its sole expense, the listing of the Common Shares issuable upon exercise of the Warrants at any time, subject to issuance or notice of issuance, on all National Securities Exchanges and Alternative Securities Exchanges on which the Common Shares are then listed or traded and (B) maintain such listings of such Common Shares at all times after issuance. The Company shall take all action reasonably necessary to ensure that the Common Shares will be issued without violation of any applicable Law or regulation or of any requirement of any securities exchange on which the Common Shares are listed or traded.

Section 3.11 Charges, Taxes and Expenses. Issuance of the Warrant Certificates evidencing Warrants and issuance of Common Shares upon the exercise of the Warrants shall be made without charge for any documentary, stamp or similar issue or transfer tax or other incidental expense in respect of the issuance thereof, all of which taxes and expenses shall be paid by the Company; provided, however, that the Company shall not be required to pay any tax

that may be payable in respect of any Transfer involved in the issuance and delivery of Warrant Certificates evidencing such Warrants or Common Shares in book-entry form or any certificates for Common Shares or payment of cash or other property in a name or to any Person other than the Warrantholder of the Warrant Certificate surrendered upon exercise or Transfer, and the Company shall not be required to issue or deliver Warrant Certificates or Common Shares in book-entry form or any certificates for Common Shares or payment of cash or other property, as applicable, unless and until the Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have reasonably demonstrated that such tax has been paid.

Section 3.12 Cancellation of Warrant Certificates. Any Definitive Warrant Certificate surrendered for exercise shall, if surrendered to the Company, be delivered to the Warrant Agent. All Warrant Certificates surrendered or delivered to or received by the Warrant Agent for cancellation pursuant to this Section 3.12 or Section 2.4(e) or Section 2.4(k) shall be promptly cancelled by the Warrant Agent and shall not be reissued by the Company. The Warrant Agent shall destroy any such cancelled Warrant Certificates and deliver its certificate of destruction to the Company, unless the Company shall otherwise direct.

ARTICLE 4

ADJUSTMENTS

Section 4.1 Adjustments and Other Rights. The Exercise Price and the number of Common Shares into which each Warrant is to be convertible pursuant to Article 3 of this Warrant Agreement shall be subject to adjustment from time to time in accordance with this Article 4; provided that (i) no single event shall be subject to adjustment under more than one subsection of this Article 4 so as to result in duplication and (ii) if any single event would otherwise require adjustment of the Exercise Price pursuant to more than one such subsection, the adjustment that provides the highest value relative to the rights and interests of each Warrantholder shall be made; provided, further that, notwithstanding any provision of this Warrant Agreement to the contrary, any adjustment shall be made to the extent (and only to the extent) that such adjustment would not cause or result in a Warrantholder and its Affiliates, collectively, being in violation of any applicable Law, regulation or rule of any governmental authority or self-regulatory organization. Any adjustment (or portion thereof) prohibited pursuant to the immediately foregoing proviso shall be postponed and implemented on the first date on which such implementation would not result in the condition described in such proviso.

Section 4.2 Dividends, Distributions, Stock Splits, Subdivisions, Reclassifications or Combinations. If the Company shall (i) declare a dividend or make a distribution on its Common Shares in Common Shares, (ii) split, subdivide, recapitalize, restructure or reclassify the outstanding Common Shares into a greater number of Common Shares or effect a similar transaction or (iii) combine, recapitalize, restructure or reclassify the outstanding Common Shares into a smaller number of Common Shares or effect a similar transaction, in each case other than upon a transaction to which Section 4.5 or Section 4.6 applies, the number of Common Shares issuable upon exercise of a Warrant at the time of the Record Date for such dividend or distribution or the effective date of such split, subdivision, combination, recapitalization, restructuring, reclassification or similar transaction shall be proportionately adjusted so that the Warrantholder, after such date, shall be entitled to purchase the number of

Common Shares which such Warrantholder would have owned or been entitled to receive on such date had such Warrant been exercised immediately prior to such date. In such event, the Exercise Price in effect at the time of the Record Date for such dividend or distribution or the effective date of such split, subdivision, combination, recapitalization, restructuring, reclassification or similar transaction shall be adjusted to the number obtained by dividing (x) the product of (i) the number of Common Shares issuable upon the exercise of a Warrant before such adjustment and (ii) the Exercise Price in effect immediately prior to the Record Date or effective date, as the case may be, for such dividend, distribution, split, subdivision, combination, recapitalization, restructuring, reclassification or similar transaction giving rise to this adjustment by (y) the new number of Common Shares issuable upon exercise of a Warrant determined pursuant to the immediately preceding sentence.

Section 4.3 **Other Distributions**. In case the Company shall fix a Record Date for the making of a distribution to all holders of its Common Shares of (a) shares of any class other than Common Shares, (b) evidence of indebtedness of the Company or any Subsidiary, (c) other Securities, assets or cash (excluding dividends or distributions referred to in Section 4.2) or (d) rights or warrants (other than in connection with the adoption of a stockholder rights plan), in each such case, the Exercise Price in effect prior thereto shall be reduced immediately thereafter to the price obtained by multiplying the Exercise Price in effect immediately prior thereto by the fraction resulting from dividing (x) an amount equal to the difference resulting from (i) the number of Common Shares outstanding on such Record Date multiplied by the Fair Market Value of the Common Shares on the trading date immediately prior to such Record Date less (ii) the Fair Market Value of said shares, evidences of indebtedness, assets, cash, rights or warrants to be so distributed in the aggregate to all Common Shares outstanding on such Record Date by (y) the number of Common Shares outstanding on such Record Date multiplied by the Fair Market Value of the Common Shares on the trading date immediately prior to such Record Date. Such adjustment shall be made successively whenever such a Record Date is fixed. In such event, the number of Common Shares issuable upon the exercise of a Warrant shall be increased to the number obtained by dividing (x) the product of (i) the number of Common Shares issuable upon the exercise of a Warrant before such adjustment and (ii) the Exercise Price in effect immediately prior to the Record Date for the distribution giving rise to this adjustment by (y) the new Exercise Price determined in accordance with the second preceding sentence. In the event that such distribution is not so made, the Exercise Price and the number of Common Shares issuable upon exercise of a Warrant then in effect shall be readjusted, effective as of the date when the Board determines not to distribute such shares, evidences of indebtedness, assets, cash, rights or warrants, as the case may be, to the Exercise Price that would then be in effect and the number of Common Shares that would then be issuable upon exercise of a Warrant if such Record Date had not been fixed.

Section 4.4 **Dissolution, Total Liquidation or Winding Up**. If at any time there is a voluntary or involuntary dissolution, total liquidation or winding-up of the Company, then the Company shall provide each Warrantholder with written notice of the date on which such dissolution, liquidation or winding-up shall take place (and, in any event, not less than 30 days before any date set for definitive action). Such notice shall also specify the date as of which the record holders of Common Shares shall be entitled to exchange their Common Shares for Securities, money or other property deliverable upon such dissolution, liquidation or winding-up, as the case may be. On such date, each Warrantholder shall be entitled to receive, upon surrender of its Warrant for each Common Share then receivable upon exercise of such Warrant, the cash,

Securities or other property, less the Exercise Price for such Warrant then in effect, that such Warrantholder would have been entitled to receive in respect of such Common Share had such Warrant been exercised immediately prior to such dissolution, liquidation or winding-up. Upon receipt of such cash, Securities or other property, any and all rights of such Warrantholder to exercise such Warrant shall terminate in their entirety. If the cash, Securities or other property distributable in respect of such Common Share in the dissolution, liquidation or winding-up has a Fair Market Value which is less than the Exercise Price for such Warrant then in effect, no such cash, Securities or other property shall be delivered to such Warrantholder in respect of such Warrants and such Warrant shall terminate and be of no further force or effect upon the dissolution, liquidation or winding-up.

Section 4.5 Successor upon Consolidation, Merger and Sale of Assets.

(a) Other than with respect to a Liquidity Event, the Company may only consolidate or merge with any other Person (a "**Fundamental Equity Change**"), so long as the Company is the surviving Person, or, in the event that the Company is not the surviving Person:

(i) the successor to the Company assumes all of the Company's obligations under this Warrant Agreement and the Warrants in form and substance reasonably satisfactory to the Required Warrantholders; and

(ii) the successor to the Company provides written notice of such assumption to the Warrant Agent.

(b) In the case of any Fundamental Equity Change other than a Liquidity Event, the successor entity shall succeed to and be substituted for the Company with the same effect as if it had been named herein as the Company; provided, however, such successor entity shall provide the Warrant Agent with any such identifying corporate information as reasonably required by the Warrant Agent. Such successor entity thereupon may cause to be signed, and may issue any or all of the Warrants issuable pursuant to this Warrant Agreement which theretofore shall not have been signed by the Company; and, upon the order of such successor entity, instead of the Company, and subject to all the terms, conditions and limitations in this Warrant Agreement prescribed, the Warrant Agent shall authenticate and deliver, as applicable, any Warrants that previously shall have been signed and delivered by the officers of the Company to the Warrant Agent for authentication, and any Warrants which such successor entity thereafter shall cause to be signed and delivered to the Warrant Agent for such purpose.

(c) If a Liquidity Event is consummated prior to the Expiration Time and the Company duly and timely effects notice to the Warrantholders in accordance with Section 4.10, then any Warrants that are unexercised prior to the consummation of such Liquidity Event shall be deemed to have expired worthless and will be cancelled for no further consideration.

Section 4.6 Adjustment upon Reorganization Event.

(a) If there occurs any Fundamental Equity Change (other than a Liquidity Event) or any recapitalization, reorganization, consolidation, reclassification, change in

the outstanding Common Shares (other than changes resulting from a subdivision or combination to which Section 4.2 applies), statutory share exchange or other transaction (each such event a "**Reorganization Event**"), in each case as a result of which the Common Shares would be converted into, changed into or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (the "**Reference Property**"), then following the effective time of the Reorganization Event, the right to receive Common Shares upon exercise of a Warrant shall be changed to a right to receive, upon exercise of such Warrant, the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of one Common Shares would have owned or been entitled to receive in connection with such Reorganization Event (such kind and amount of Reference Property per share of Common Shares, a "**Unit of Reference Property**"). In the event holders of Common Shares have the opportunity to elect the form of consideration to be received in a Reorganization Event, the type and amount of consideration into which the Warrants shall be exercisable from and after the effective time of such Reorganization Event shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Shares in such Reorganization Event. The Company hereby agrees not to become a party to any Reorganization Event unless its terms are consistent with this Section 4.6.

(b) At any time from, and including, the effective time of a Reorganization Event:

(i) if Cash Settlement applies upon exercise of a Warrant, the Cash Settlement Share Amount shall be equal to a single Unit of Reference Property;

(ii) if Cashless Settlement applies upon exercise of a Warrant, the Cashless Settlement Share Amount shall be calculated pursuant to the definition thereof with one fully paid and nonassessable Common Share equal to a single Unit of Reference Property;

(iii) the Company shall pay cash in lieu of issuing such fractional Unit of Reference Property or any fractional Warrant in accordance with Section 3.6 based on the Fair Market Value of the Unit of Reference Property as of the Exercise Date; and

(iv) the Fair Market Value shall be calculated with respect to a Unit of Reference Property.

(c) On or prior to the effective time of any Reorganization Event (other than a Liquidity Event), the Company or the successor or purchasing Person, as the case may be, shall execute an amendment to this Warrant Agreement providing that the Warrants shall be exercisable for Units of Reference Property in accordance with the terms of this Section 4.6. If the Reference Property in connection with any Reorganization Event includes shares of stock or other securities and assets of a Person other than the successor or purchasing Person, as the case may be, in such Reorganization Event, then the Company shall cause such amendment to this Warrant Agreement to be executed by such other Person and such amendment shall contain such additional provisions to protect the interests of the Warrantholder (for the benefit of the Beneficial Owners under this

Warrant Agreement) as the Board and the Required Warrantholders shall reasonably consider necessary by reason of the foregoing. Any such amendment to this Warrant Agreement shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 4. In the event the Company shall execute an amendment to this Warrant Agreement pursuant to this Section 4.6, the Company shall promptly file with the Warrant Agent a certificate executed by a duly authorized officer of the Company briefly stating the reasons therefor, the kind or amount of cash, securities or property or assets that will comprise a Unit of Reference Property after the relevant Reorganization Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with. The Company shall cause notice of the execution of the amendment to be mailed to the Warrantholder, at its address appearing on the Warrant Register, within five Business Days after execution thereof.

(d) The above provisions of this Section 4.6 shall similarly apply to successive Reorganization Events.

(e) If this Section 4.6 applies to any event or occurrence, no other provision of this Article 4 shall apply to such event or occurrence (other than Section 4.5).

Section 4.7 Rounding of Calculations; Minimum Adjustments. All calculations under this Article 4 shall be made to the nearest one-tenth (1/10th) of a cent or to the nearest one-hundredth (1/100th) of a share, as the case may be. Any provision of this Article 4 to the contrary notwithstanding, no adjustment in the Exercise Price or the number of Common Shares issuable upon the exercise of a Warrant shall be made if the amount of such adjustment would be less than $0.01 or one-tenth (1/10th) of a Common Share, respectively, but any such amount shall be carried forward and an adjustment with respect thereto shall be made at the time of and together with any subsequent adjustment which, together with such amount and any other amount or amounts so carried forward, shall aggregate $0.01 or 1/10th of a Common Share, respectively, or more, subject in all cases to Section 3.6.

Section 4.8 Timing of Issuance of Additional Common Shares Upon Certain Adjustments. In any case in which the provisions of this Article 4 shall require that an adjustment shall become effective immediately after a Record Date for an event or an agreement to issue or sell Common Shares or Convertible Securities, the Company may defer until the occurrence of such event, issuance or sale (i) issuing to each Warrantholder of a Warrant exercised after such Record Date or date of such agreement and before the occurrence of such event, issuance or sale the additional Common Shares issuable upon such exercise by reason of the adjustment required by such Record Date or agreement over and above the Common Shares issuable upon such exercise before giving effect to such adjustment and (ii) paying to such Warrantholder any amount of cash in lieu of a fractional Common Share.

Section 4.9 Statement Regarding Adjustments. Whenever the Exercise Price or the number of Common Shares issuable upon exercise of a Warrant shall be adjusted as provided in this Article 4, the Company shall promptly, and in any event within three Business Days, file, at the principal office of the Company, a statement showing in reasonable detail the facts requiring such adjustment and the Exercise Price that shall be in effect and the number of Common Shares issuable upon exercise of a Warrant after such adjustment. The Company shall also cause a copy

of such statement to be delivered to each Warrantholder at the address appearing in the Company's records.

Section 4.10 Notice of Adjustment Event. In the event that (i) the Company shall propose to take any action of the type described in this Article 4 or (ii) the Company fixes any Record Date for any event, the Company shall give notice to each Warrantholder, in the manner set forth in Section 4.9, which notice shall specify the Record Date, if any, with respect to any such action and the approximate date on which such action is to take place. Such notice shall also set forth the facts with respect thereto (including the material terms with respect to any contemplated transaction) and indicate the effect on the Exercise Price and the number, kind or class of shares or other Securities or property which shall be deliverable upon exercise or exchange of a Warrant, if any. Such notice shall be given at least 10 days prior to the taking of such proposed action; provided that notice of any Liquidity Event shall be given at least 21 days prior to the taking of such proposed action. Failure to give such notice, or any defect therein, shall not affect the legality or validity of any such action. Nothing herein shall prohibit the Warrantholders from exercising their Warrants during the 10 day period commencing on the date of such notice (21 days in the case of a Liquidity Event).

Section 4.11 Proceedings Prior to Any Action Requiring Adjustment. As a condition precedent to the taking of any action which would require an adjustment pursuant to this Article 4, the Company shall take any action which may be necessary, including obtaining regulatory, stock exchange (if applicable) or stockholder approvals or exemptions under the Securities Act, in order that the Company may thereafter validly and legally issue, as fully paid and nonassessable, all Common Shares that each Warrantholder is entitled to receive upon exercise of a Warrant.

Section 4.12 Adjustment Rules. Any adjustments pursuant to this Article 4 shall be made successively whenever an event referred to herein shall occur. If an adjustment in the Exercise Price made hereunder would reduce the Exercise Price to an amount below the par value of the Common Shares, then such adjustment in the Exercise Price made hereunder shall reduce the Exercise Price to the par value of the Common Shares and then, so long as the Company shall have taken any corporate action which would, in the opinion of its counsel, be necessary in order that the Company may validly issue Common Shares at the Exercise Price as so adjusted in accordance with its obligations under Section 3.9, to such lower par value as may then be established.

Section 4.13 Optional Tax Adjustment. The Company may at its option, at any time prior to the Expiration Time, increase the number of Common Shares into which each Warrant is exercisable, or decrease the Exercise Price for such Warrant, in addition to those changes otherwise required by this Article 4, as deemed advisable by the Board, in order that any event treated for Federal income tax purposes as a dividend of stock or stock rights shall not be taxable to the recipients or that such tax shall be diminished.

Section 4.14 **Stockholder Rights Plans**. If the Company has a stockholder rights plan in effect with respect to the Common Shares, upon exercise of a Warrant the applicable Beneficial Owner shall be entitled to receive, in addition to the Common Share, the rights under such stockholder rights plan, subject to readjustment in the event of the expiration, termination or redemption of such rights.

ARTICLE 5

OTHER PROVISIONS RELATING TO RIGHTS OF WARRANTHOLDERS

Section 5.1 **No Rights as Stockholders**. Nothing contained in this Warrant Agreement shall be construed as conferring upon any Person, by virtue in and of itself of holding a Warrant Certificate evidencing any Warrant or having a beneficial interest in a Warrant, the right to vote, receive any dividend or other distribution, receive notice of, or attend, any meeting of stockholders or otherwise exercise any rights whatsoever, in each case, as a stockholder of the Company to the extent such vote, dividend, giving of notice, meeting or other exercise of rights (or, if applicable, the relevant Record Date therefor) precedes the Close of Business on the Exercise Date with respect to the exercise of such Warrant. No Warrantholder shall have any right not expressly conferred hereunder or under, or by applicable Law with respect to, the Warrant Certificate held by such holder.

Section 5.2 **Modification/Amendment**.

(a) This Warrant Agreement or the Warrants may be modified or amended by the Company and the Warrant Agent, without the consent of any Warrantholder, for the purposes of (i) curing any ambiguity or correcting or supplementing any defective provision contained in this Warrant Agreement or (ii) providing for the assumption of the Company's obligations pursuant to Section 4.5; provided that, in each case, any such modification or amendment does not adversely affect the interests of the Warrantholders in any material respect.

(b) This Warrant Agreement or the Warrants may be modified or amended, or noncompliance with any provision of the Warrant Agreement or the Warrants may be waived, only upon the written consent of the Required Warrantholders and the Company; provided, however, that any modification, amendment or waiver that adversely affects the interests of a Warrantholder disproportionately relative to any other Warrantholder (including any Beneficial Owner) in any material respect shall require the written consent of such Warrantholder so affected; provided, further, no such modification, amendment or waiver may, without the written consent or the affirmative vote of each Warrantholder affected (A) change the Expiration Time to an earlier time or date; or (B) increase the Exercise Price or decrease the number of Common Shares for which a Warrant is exercisable (except as set forth in Article 4). Any consent delivered by electronic means shall be deemed to constitute written consent.

(c) Upon execution and delivery of any amendment pursuant to this Section 5.2, such amendment shall be considered a part of this Warrant Agreement for all purposes and every Warrantholder holding a Warrant Certificate theretofore or thereafter countersigned and delivered hereunder shall be bound thereby.

Section 5.3 **Rights of Action**. All rights of action against the Company in respect of this Warrant Agreement are vested in the Warrantholders, and any Warrantholder, without the consent of the Warrant Agent or any other Warrantholder, may, on such Warrantholder's own behalf and for such Warrantholder's own benefit, enforce and may institute and maintain any suit, action or proceeding against the Company suitable to enforce, or otherwise in respect of, such Warrantholder's right to exercise such Warrantholder's Warrants in the manner provided in this Warrant Agreement.

Section 5.4 **Issuance Obligation Remedies**. Nothing in this Warrant Agreement shall limit the right of any Warrantholder to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance or injunctive relief with respect to the Company's violation of its obligations under this Warrant Agreement, including, without limitation, any failure by the Company to timely issue Warrant Shares upon exercise of such Warrant as required pursuant to the terms hereof.

Section 5.5 **No Impairment**.

(a) The Company will not, by amendment to its Company's certificate of incorporation or bylaws or through reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of the Warrants or this Warrant Agreement, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Warrantholders and the Beneficial Owners under this Warrant Agreement against impairment.

(b) Without limiting the generality of the foregoing, the Company will (a) not increase the par value of any Common Shares obtainable upon the exercise of the Warrants and (b) take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Common Shares upon the exercise of the Warrants.

(c) Before taking any action that would cause an adjustment reducing the Exercise Price below the then par value of the Common Shares, the Company will take any corporate action that may be necessary in order that the Company may validly and legally issue paid and non-assessable shares of Common Shares at such adjusted Exercise Price.

ARTICLE 6

CONCERNING THE WARRANT AGENT AND OTHER MATTERS

Section 6.1 **Change of Warrant Agent**.

(a) The Warrant Agent, or any successor to it hereafter appointed, may resign its duties and be discharged from all further duties and liabilities hereunder (except for liability arising as a result of the Warrant Agent's own gross negligence, willful misconduct actual fraud or material breach of this Warrant Agreement) after giving 60 days' notice in writing to the Company, except that such shorter notice may be given as the Company shall, in writing, accept as sufficient. If the office of the Warrant Agent becomes vacant by resignation or incapacity to act or otherwise, the Company shall

appoint in writing a successor warrant agent in place of the Warrant Agent. If the Company shall fail to make such appointment within a period of 30 days after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated warrant agent or by the Required Warrantholders, then the Required Warrantholders may appoint a successor warrant agent.

(b) The Warrant Agent may be removed by the Company at any time upon 30 days' written notice to the Warrant Agent; provided, however, that the Company shall not remove the Warrant Agent until a successor warrant agent meeting the qualifications hereof shall have been appointed; provided, further, that, until such successor warrant agent has been appointed, the Company shall compensate the Warrant Agent in accordance with Section 6.2.

(c) Any successor warrant agent, whether appointed by the Company or by such a court, shall be a corporation or banking association organized, in good standing and doing business under the Laws of the United States of America or any state thereof or the District of Columbia, and authorized under such Laws to exercise corporate trust powers and subject to supervision or examination by federal or state authority and having a combined capital and surplus of not less than $50,000,000. The combined capital and surplus of any such successor warrant agent shall be deemed to be the combined capital and surplus as set forth in the most recent report of its condition published prior to its appointment; provided that such reports are published at least annually pursuant to Law or to the requirements of a federal or state supervising or examining authority.

(d) After acceptance in writing of such appointment by the successor warrant agent, such successor warrant agent shall be vested with all the authority, powers, rights, immunities, duties and obligations of its predecessor warrant agent with like effect as if originally named as warrant agent hereunder, without any further act or deed; but if for any reason it becomes necessary or appropriate, the predecessor warrant agent shall execute and deliver, at the expense of the Company, an instrument transferring to such successor warrant agent all the authority, powers and rights of such predecessor warrant agent hereunder; and upon request of any successor warrant agent, the Company shall make, execute, acknowledge and deliver any and all instruments in writing to more fully and effectually vest in and conform to such successor warrant agent all such authority, powers, rights, immunities, duties and obligations. Upon assumption by a successor warrant agent of the duties and responsibilities hereunder, the predecessor warrant agent shall deliver and transfer, at the expense of the Company, to the successor warrant agent any property at the time held by it hereunder. As soon as practicable after such appointment, the Company shall give notice thereof to the predecessor warrant agent and each transfer agent for its Common Shares. Failure to give such notice, or any defect therein, shall not affect the validity of the appointment of the successor warrant agent.

(e) Any entity into which the Warrant Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Warrant Agent shall be a party, or any Person succeeding to all or substantially all of the corporate trust or agency business of the Warrant Agent, shall be the successor warrant agent under this Warrant Agreement without the execution or filing of any paper or any further act on the part of any of the

parties hereto; provided, however, that such entity would be eligible for appointment as a successor warrant agent under Section 6.1(c).

Section 6.2 Compensation; Further Assurances. The Company agrees that it will (a) pay the Warrant Agent reasonable compensation for its services as Warrant Agent in accordance with Exhibit C attached hereto and, except as otherwise expressly provided, will pay or reimburse the Warrant Agent upon written demand for all reasonable and documented expenses, disbursements and advances incurred or made by the Warrant Agent in accordance with any of the provisions of this Warrant Agreement (including the reasonable and documented compensation, expenses and disbursements of its counsel incurred in connection with the execution and administration of this Warrant Agreement), except any such expense, disbursement or advance as may arise from its or any of their gross negligence, willful misconduct or actual fraud, and (b) perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Warrant Agent for the carrying out or performing of the provisions of this Warrant Agreement. The Warrant Agent agrees to provide the Company with prior written notice of the retention of counsel whose compensation, expenses and disbursements are to be paid or reimbursed by the Company under this Section 6.2.

Section 6.3 Reliance on Counsel. The Warrant Agent may consult with legal counsel (who may be legal counsel for the Company), and the written opinion of such counsel or any advice of legal counsel subsequently confirmed by a written opinion of such counsel shall be full and complete authorization and protection to the Warrant Agent as to any action taken or omitted by it in good faith and in accordance with such written opinion or advice.

Section 6.4 Proof of Actions Taken. Whenever in the performance of its duties under this Warrant Agreement the Warrant Agent shall deem it necessary or desirable that any matter be proved or established by the Company prior to taking or suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the good faith of the Warrant Agent, be deemed to be conclusively proved and established by a certificate executed by a duly authorized officer of the Company delivered to the Warrant Agent, and such certificate shall, in the good faith of the Warrant Agent, be relied upon by the Warrant Agent for any action taken, suffered or omitted in good faith by it under the provisions of this Warrant Agreement; provided that in its discretion, the Warrant Agent may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as to it may seem reasonable.

Section 6.5 Correctness of Statements. The Warrant Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Warrant Agreement (except its countersignature thereof) or be required to verify the same, and all such statements and recitals are and shall be deemed to have been made by the Company only.

Section 6.6 Validity of Agreement. From time to time, the Warrant Agent may apply to any duly authorized officer of the Company for instruction, and the Company shall provide the Warrant Agent with such instructions concerning the services to be provided hereunder. The Warrant Agent shall not be held to have notice of any change of authority of any Person, until receipt of notice thereof from the Company. The Warrant Agent shall not be responsible for any breach by the Company of any covenant or condition contained in this Warrant Agreement, nor shall it by any act hereunder be deemed to make any representation or warranty as to the

authorization or reservation of any Common Shares to be issued pursuant to this Warrant Agreement or any Warrants or as to whether any Common Shares will, when issued, be validly issued, fully paid and nonassessable. The Warrant Agent and its agents and subcontractors shall not be liable and shall be indemnified by the Company for any action taken or omitted by Warrant Agent in reliance in good faith upon any Company instructions except to the extent that the Warrant Agent had actual knowledge of facts and circumstances that would render such reliance unreasonable.

Section 6.7 Use of Agents. The Warrant Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys or agents provided that the Warrant Agent shall remain responsible for the activities or omissions of any such agent or attorney and reasonable care has been exercised in the selection and in the continued employment of such attorney or agent.

Section 6.8 Liability of Warrant Agent. The Warrant Agent shall incur no liability or responsibility to the Company or to any Warrantholder for any action taken or not taken (a) in reliance on any notice, resolution, waiver, consent, order, certificate, or other paper, document or instrument reasonably believed by it to be genuine and to have been signed, sent and presented by the proper party or parties or (b) in relation to its services under this Warrant Agreement, unless such liability arises out of or is attributable to the Warrant Agent's gross negligence, material breach of this Warrant Agreement, willful misconduct or actual fraud. The Company agrees to indemnify the Warrant Agent and save it harmless against any and all losses, expenses and liabilities, including judgments, costs and reasonable counsel fees, for anything done or omitted in good faith by the Warrant Agent in the execution of this Warrant Agreement or otherwise arising in connection with this Warrant Agreement, except as a result of the Warrant Agent's gross negligence, material breach of this Warrant Agreement, willful misconduct or actual fraud (as determined by a court of competent jurisdiction in a final non-appealable judgment). The Warrant Agent shall be liable hereunder only for its gross negligence, material breach of this Warrant Agreement, actual fraud or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment), for which the Warrant Agent is not entitled to indemnification under this Warrant Agreement.

Section 6.9 Legal Proceedings. The Warrant Agent shall be under no obligation to institute any action, suit or legal proceeding or to take any other action likely to involve expense unless the Company or any Warrantholder shall furnish the Warrant Agent with reasonable indemnity for any costs and expenses which may be incurred, but this provision shall not affect the power of the Warrant Agent to take such action as the Warrant Agent may consider proper, whether with or without any such security or indemnity. The Warrant Agent shall promptly notify the Company and each Warrantholder in writing of any claim made or action, suit or proceeding instituted against it arising out of or in connection with this Warrant Agreement.

Section 6.10 Actions as Agent.

(a) The Warrant Agent shall act hereunder solely as agent and not in a ministerial or fiduciary capacity, and its duties shall be determined solely by the provisions hereof. The duties and obligations of the Warrant Agent shall be determined solely by the express provisions of the Warrant Agreement or of the Warrant Certificates, and the Warrant Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth in the Warrant Agreement or in the Warrant

Certificates. No implied covenants or obligations shall be read into the Warrant Agreement against the Warrant Agent. The Warrant Agent shall not be liable for anything that it may do or refrain from doing in good faith in connection with this Warrant Agreement except for its own gross negligence, willful misconduct or actual fraud.

(b) The Warrant Agent shall not, by countersigning Warrant Certificates or by any other act hereunder, be deemed to make any representations as to validity or authorization of the Warrants or the Warrant Certificates (except as to its countersignature thereon). The Warrant Agent shall not be responsible for any failure of the Company to make any cash payment or to issue, transfer or deliver any Common Shares or stock certificates or other securities or property upon the surrender of any Warrant Certificate for the purpose of exercise or upon any adjustment pursuant to Article 4 hereof or to comply with any of the covenants of the Company contained in Article 4 hereof.

(c) The Warrant Agent shall not (i) be liable for any recital or statement of fact contained herein or in the Warrant Certificates or for any action taken, suffered or omitted by it in good faith on the belief that any Warrant Certificate or any other documents or any signatures are genuine or properly authorized, (ii) be responsible for any failure on the part of the Company to comply with any of its covenants and obligations contained in this Warrant Agreement or in the Warrant Certificates or (iii) be liable for any act or omission in connection with this Warrant Agreement except for its own gross negligence, actual fraud or willful misconduct.

(d) The Warrant Agent is hereby authorized to accept and protected in accepting instructions with respect to the performance of its duties hereunder by Company Order and to apply to any such officer named in such Company Order for instructions (which instructions will be promptly given in writing when requested), and the Warrant Agent shall not be liable for any action taken or suffered to be taken by it in good faith in accordance with the instructions in any Company Order.

Section 6.11 Appointment and Acceptance of Agency. The Company hereby appoints the Warrant Agent to act as agent for the Company in accordance with the instructions set forth in this Warrant Agreement, and the Warrant Agent hereby accepts the agency established by this Warrant Agreement and agrees to perform the same upon the terms and conditions set forth in this Warrant Agreement and in the Warrant Certificates or as the Company and the Warrant Agent may hereafter agree, by all of which the Company and the Warrantholders of Warrant Certificates, by their acceptance thereof, shall be bound; provided, however, that the terms and conditions contained in the Warrant Certificates are subject to and governed by this Warrant Agreement or any other terms and conditions hereafter agreed to by the Company and the Warrant Agent.

Section 6.12 Appointment of Countersigning Agent.

(a) The Warrant Agent may appoint a Countersigning Agent or Agents which shall be authorized to act on behalf of the Warrant Agent to countersign Warrant Certificates issued upon original issue and upon exchange, registration of Transfer or pursuant to Section 2.8, and Warrant Certificates so countersigned shall be entitled to the

benefits of this Warrant Agreement equally and proportionately with any and all other Warrant Certificates duly executed and delivered hereunder. Wherever reference is made in this Warrant Agreement to the countersignature and delivery of Warrant Certificates by the Warrant Agent or to Warrant Certificates countersigned by the Warrant Agent, such reference shall be deemed to include countersignature and delivery on behalf of the Warrant Agent by a Countersigning Agent and Warrant Certificates countersigned by a Countersigning Agent. Each Countersigning Agent shall be acceptable to the Company and shall at the time of appointment be a corporation doing business under the Laws of the United States of America or any State thereof in good standing, authorized under such Laws to act as Countersigning Agent, and having a combined capital and surplus of not less than $25,000,000. The combined capital and surplus of any such new Countersigning Agent shall be deemed to be the combined capital and surplus as set forth in the most recent annual report of its condition published by such Countersigning Agent prior to its appointment; provided, however, such reports are published at least annually pursuant to Law or to the requirements of a Federal or state supervising or examining authority.

(b) Any corporation into which a Countersigning Agent may be merged or any corporation resulting from any consolidation to which such Countersigning Agent shall be a party, shall be a successor Countersigning Agent without any further act; provided, that, such corporation would be eligible for appointment as a new Countersigning Agent under the provisions of Section 6.12(a), without the execution or filing of any paper or any further act on the part of the Warrant Agent or the Countersigning Agent. Any such successor Countersigning Agent shall promptly cause notice of its succession as Countersigning Agent to be given in accordance with Section 6.14 to each Warrantholder of a Warrant Certificate at such Warrantholder's last address as shown on the Warrant Register.

(c) A Countersigning Agent may resign at any time by giving 30 days' prior written notice thereof to the Warrant Agent and to the Company. The Warrant Agent may at any time terminate the agency of a Countersigning Agent by giving 30 days' prior written notice thereof to such Countersigning Agent and to the Company.

(d) The Warrant Agent agrees to pay to each Countersigning Agent from time to time reasonable compensation for its services under this Section 6.12 and the Warrant Agent shall be entitled to be reimbursed for such payments, subject to the provisions of Section 6.2.

(e) Any Countersigning Agent shall have the same rights and immunities as those of the Warrant Agent set forth in Section 6.8 and Section 6 10.

Section 6.13 Successors and Assigns. All the covenants and provisions of this Warrant Agreement by or for the benefit of the Company or the Warrant Agent shall bind and inure to the benefit of their respective successors and assigns hereunder. The Warrant Agent may assign this Warrant Agreement or any rights and obligations hereunder, in whole or in part, to an Affiliate thereof with the prior consent of the Company, provided that the Warrant Agent may make such an assignment without consent of the Company to any successor to the Warrant Agent by consolidation, merger or transfer of its assets subject to the terms and conditions of this Warrant Agreement.

Section 6.14 **Notices**. Any notice or demand authorized by this Warrant Agreement to be given or made to the Company shall be sufficiently given or made if sent by mail first-class, postage prepaid, addressed (until another address is filed in writing by the Company with the Warrant Agent) or electronic mail, as follows:

Chesapeake Energy Corporation
6100 North Western Avenue,
Oklahoma City, Oklahoma 73118
Attention: James R. Webb, Executive Vice President, General Counsel and Corporate Secretary
Email: jim.webb@chk.com

Any notice or demand authorized by this Warrant Agreement to be given or made to the Warrant Agent shall be sufficiently given or made if sent by mail first-class, postage prepaid, addressed (until another address is filed in writing by the Warrant Agent with the Company) or electronic mail, as follows:

Equiniti Trust Company
P.O. Box 64874
St. Paul, MN 55164
Attention: Nancy Petersen
Email: Nancy.Petersen@equiniti.com

Any notice or demand authorized by this Warrant Agreement to be given or made to any Warrantholder shall be sufficiently given or made if sent by first-class mail, postage prepaid or electronic mail to the last address of the Warrantholder as it shall appear on the Warrant Register, with a copy (which shall not constitute notice) to its counsel listed on such Warrant Register.

Section 6.15 **Applicable Law; Jurisdiction**. The validity, interpretation and performance of this Warrant Agreement and the Warrant Certificates evidencing the Warrants shall be governed in accordance with the Laws of the State of New York, without giving effect to the principles of conflicts of Laws thereof that would result in the application of Law of another jurisdiction. The parties hereto irrevocably consent to the exclusive jurisdiction of the courts of the State of New York and any federal court located in such state in connection with any action, suit or proceeding arising out of or relating to this Warrant Agreement or the Warrant Certificates issued hereunder. Each party agrees to commence any such suit, action or proceeding in such court. Each party hereto hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any suit, action or proceeding with respect to this Warrant Agreement or the Warrant Certificates issued hereunder, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason other than the failure to serve process in accordance with this Section 6.15, that its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise), and to the fullest extent permitted by applicable Law, that the suit, action or proceeding in any such court is brought in an inconvenient forum, or that this Warrant Agreement or the Warrant Certificates issued hereunder, or the subject matter hereof, may not be enforced in or by such courts and further irrevocably waives, to the fullest extent permitted by applicable Law, the benefit of any defense that would hinder, fetter or delay the levy, execution or collection of any amount to which the

party is entitled pursuant to the final judgment of any court having jurisdiction. Each party irrevocably consents to the service of process out of any of the aforementioned courts in any such suit, action or proceeding by the mailing of copies thereof by registered mail, postage prepaid, to such party at its mailing address determined in accordance with this Warrant Agreement, such service of process to be effective upon acknowledgment of receipt of such registered mail. Nothing herein shall affect the right of any party to serve process in any other manner permitted by Law.

Section 6.16 **Waiver of Jury Trial**. EACH OF THE COMPANY AND THE WARRANT AGENT ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS WARRANT AGREEMENT OR A WARRANT CERTIFICATE EVIDENCING A WARRANT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PERSON HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PERSON MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS WARRANT AGREEMENT OR A WARRANT CERTIFICATE EVIDENCING A WARRANT. EACH OF THE COMPANY AND THE WARRANT AGENT CERTIFIES AND ACKNOWLEDGES THAT (a) NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (b) SUCH PERSON UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (c) SUCH PERSON MAKES THIS WAIVER VOLUNTARILY, AND (d) SUCH PERSON HAS BEEN INDUCED TO ENTER INTO THIS WARRANT AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 6.17 **Specific Performance**. Each of the Company and the Warrant Agent acknowledges that a breach or threatened breach by such party of any of its obligations under this Warrant Agreement would give rise to irreparable harm to the other party hereto for which monetary damages would not be an adequate remedy and hereby agrees that in the event of a breach or a threatened breach by such party of any such obligations, the other party hereto shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction.

Section 6.18 **Benefit of this Warrant Agreement**. Nothing in this Warrant Agreement expressed and nothing that may be implied from any of the provisions hereof is intended, or shall be construed, to confer upon, or give to, any Person other than the parties hereto and the Warrantholders any right, remedy or claim under or by reason of this Warrant Agreement or of any covenant, condition, stipulation, promise or agreement hereof, and all covenants, conditions, stipulations, promises and agreements in this Warrant Agreement contained shall be for the sole and exclusive benefit of the parties hereto and their respective successors and permitted assigns and the Warrantholders. Each Warrantholder, by acceptance of a Warrant Certificate, agrees to all of the terms and provisions of this Warrant Agreement applicable thereto.

Section 6.19 **Registered Warrantholder**. Every Warrantholder, by accepting a Warrant Certificate, consents and agrees with the Company, with the Warrant Agent and with every subsequent holder of such Warrant Certificate that, prior to due presentment for registration of Transfer, the Company and the Warrant Agent may deem and treat the Person in whose name any Warrant Certificates are registered in the Warrant Register as the absolute owner thereof and of the Warrants evidenced thereby for all purposes whatever (notwithstanding any notation of ownership or other writing thereon made by anyone other than the Company or the Warrant Agent) and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary or be bound to recognize any equitable or other claim to or interest in any Warrant Certificates or any Warrants evidenced thereby on the part of any other Person and shall not be liable for any registration of Transfer of Warrant Certificates that are registered or to be registered in the name of a fiduciary or the nominee of a fiduciary unless made with actual knowledge that a fiduciary or nominee is committing a breach of trust in requesting such registration of Transfer or with such knowledge of such facts that its participation therein amounts to actual fraud.

Section 6.20 **Headings**. The Article and Section headings herein are for convenience only and are not a part of this Warrant Agreement and shall not affect the interpretation thereof.

Section 6.21 **Counterparts**. This Warrant Agreement may be executed in any number of counterparts on separate counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument. A signed copy of this Warrant Agreement delivered by e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Warrant Agreement.

Section 6.22 **Entire Agreement**. This Warrant Agreement constitutes the entire agreement of the Company, the Warrant Agent and the Warrantholders with respect to the subject matter hereof and supersede all prior agreements and undertakings, both written and oral, among the Company, the Warrant Agent and the Warrantholders with respect to the subject matter hereof.

Section 6.23 **Severability**. Wherever possible, each provision of this Warrant Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Warrant Agreement shall be prohibited by or invalid under applicable Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Warrant Agreement.

Section 6.24 **Termination**. This Warrant Agreement shall terminate at the earlier to occur of (i) the Expiration Time (or, if later, Close of Business on the Settlement Date with respect to all exercises of Warrants as to which the respective Exercise Date is prior to the Expiration Time) and (ii) the date on which all outstanding Warrants have been exercised. All provisions regarding indemnification, warranty, liability and limits thereon shall survive the termination or expiration of this Warrant Agreement.

Section 6.25 **Confidentiality**. The Warrant Agent and the Company agree that personal, non-public Warrantholder information which is exchanged or received pursuant to the negotiation or the carrying out of this Warrant Agreement shall remain confidential, and shall not be voluntarily disclosed to any other Person, except disclosures pursuant to bankruptcy proceedings, applicable securities Laws or otherwise as may be required by Law, including, without limitation, pursuant to subpoenas from state or federal government authorities.

Section 6.26 **Rule 144 Information**. If and when the Company becomes subject to the reporting obligations of the Securities Act and the Exchange Act, the Company covenants that it will use its reasonable best efforts to timely file all reports and other documents required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations promulgated by the U.S. Securities and Exchange Commission thereunder. In addition, whether or not the Company becomes subject to the reporting obligations of the Securities Act or the Exchange Act, the Company will use reasonable best efforts to take such further action as the Warrantholders may reasonably request, all to the extent required from time to time to enable such Warrantholders to sell the Warrants without registration under the Securities Act within the limitation of the exemptions provided by (i) Rule 144 or Regulation S under the Securities Act, as such rules may be amended from time to time or (ii) any successor rule or regulation hereafter adopted by the U.S. Securities and Exchange Commission.

Section 6.27 **Representations and Warranties of the Company**. The Company hereby represents and warrants to the Warrantholders that (i) it has the corporate power and authority to execute this Warrant Agreement and consummate the transactions contemplated by this Warrant Agreement, (ii) there are no statutory or contractual stockholders' preemptive rights or rights of refusal with respect to the issuance of any Warrants and (iii) the execution and delivery by the Company of this Warrant Agreement and the issuance of the Common Shares upon exercise of any Warrant do not and shall not (A) conflict with or result in a breach of the terms, conditions or provisions of, (B) constitute a default under, (C) result in the creation of any lien, security interest, charge or encumbrance upon the Company's capital stock or assets pursuant to, (D) result in a violation of, or (E) require any authorization, consent, approval, exemption or other action by or notice or declaration to, or filing with, any court or administrative or governmental body or agency pursuant to, the Company's certificate of incorporation or bylaws or any Law in effect as of the date hereof to which the Company is subject, or any agreement, instrument, order, judgment or decree to which the Company is subject as of the date hereof, except for any such authorization, consent, approval, notice or exemption required under applicable securities Laws.

[signature page follows]

IN WITNESS WHEREOF, this Warrant Agreement has been duly executed by the parties hereto as of the day and year first above written.

CHESAPEAKE ENERGY CORPORATION

By: /s/ James R. Webb

Name: James R. Webb

Title: Executive Vice President – General Counsel and Corporate Secretary

EQUINITI TRUST COMPANY

By: /s/ Martin J. Knapp

Name: Martin J. Knapp

Title: SVP, Relationship Director

EXHIBIT A

[Face of Warrant Certificate][1]

CHESAPEAKE ENERGY CORPORATION

WARRANT CERTIFICATE

EVIDENCING

CLASS C WARRANTS TO PURCHASE COMMON STOCK

[FACE]

No. [__] CUSIP No. 165167 180

[UNLESS THIS GLOBAL WARRANT CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("**DTC**"), TO CHESAPEAKE ENERGY CORPORATION (THE "**COMPANY**"), THE CUSTODIAN OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFER OF THIS GLOBAL WARRANT CERTIFICATE SHALL BE LIMITED TO TRANSFERS IN WHOLE, AND NOT IN PART, TO THE COMPANY, DTC, THEIR SUCCESSORS AND THEIR RESPECTIVE NOMINEES.][2]

[1] To be removed in the versions of the Warrant Certificates printed in multiple copies for use by the Warrant Agent in preparing Warrants Certificates for issuance and delivery from time to time to holders.

[2] Include only on Global Warrant Certificate.

No. [__] 13,717,420 Warrants

CUSIP No. 165167 180

THIS CERTIFIES THAT, for value received, [_____], or registered assigns, is the registered owner of the number of Class C Warrants to Purchase Common Shares of Chesapeake Energy Corporation, an Oklahoma corporation (the "**Company**", which term includes any successor thereto under the Warrant Agreement) specified above [or such lesser number as may from time to time be endorsed on the "Schedule of Decreases" attached hereto][3], and is entitled, subject to and upon compliance with the provisions hereof and of the Warrant Agreement, at such Warrantholder's option, at any time when the Warrants evidenced hereby are exercisable, to purchase from the Company one Common Share of the Company for each Warrant evidenced hereby, at the purchase price of $36.18 per share (as adjusted from time to time, the "**Exercise Price**"), payable in full at the time of purchase, the number of Common Shares into which and the Exercise Price at which each Warrant shall be exercisable each being subject to adjustment as provided in Article 4 of the Warrant Agreement.

All Common Shares issuable by the Company upon the exercise of Warrants shall, upon such issuance, be duly and validly issued and fully paid and nonassessable.

Each Warrant evidenced hereby may be exercised by the Warrantholder hereof at the Exercise Price then in effect on any Business Day from and after the Closing Date until the Expiration Time (as defined on the reverse hereof).

Subject to the provisions hereof and of the Warrant Agreement, the Warrantholder of this Warrant Certificate may exercise all or any whole number of the Warrants evidenced hereby by [providing notice to the Warrant Agent at its office maintained for such purpose (the "**Corporate Agency Office**") a duly completed and executed Exercise Notice as to the number of Warrants being exercised and, if applicable, whether Cashless Settlement is being elected with respect thereto, and delivering such Warrants by book-entry transfer through the facilities of the Depositary, to the Warrant Agent in accordance with the Applicable Procedures and otherwise complying with Applicable Procedures in respect of the exercise of such Warrants][4] [surrendering to the Warrant Agent this Warrant Certificate at the Corporate Agency Office and delivering to the Warrant Agent a duly completed and executed Exercise Notice as to whether Cashless Settlement is being elected with respect thereto][5], together with payment in full to the Warrant Agent of (x) those applicable taxes and charges required to be paid by the Warrantholder, if any, and (y) except in the case of a Cashless Settlement, the aggregate of the Exercise Price as then in effect for each Common Share receivable upon exercise of each Warrant being submitted for exercise. Any such payment of the Exercise Price is to be by wire transfer in immediately available funds to such account of the Company at such banking institution as the Company shall have designated from time to time for such purpose.

[3] Include only on Global Warrant Certificate.

[4] Include only on Global Warrant Certificate.

[5] Include only on Definitive Warrant Certificate.

Reference is hereby made to the further provisions of this Warrant Certificate set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless this Warrant Certificate has been countersigned by the Warrant Agent by manual signature of an authorized officer on behalf of the Warrant Agent, this Warrant Certificate shall not be valid for any purpose and no Warrant evidenced hereby shall be exercisable.

IN WITNESS WHEREOF, the Company has caused this certificate to be duly executed under its corporate seal.

Dated: February 9, 2021

CHESAPEAKE ENERGY CORPORATION

By: _____
Name: James R. Webb
Title: Executive Vice President - General Counsel and Corporate Secretary

ATTEST:

Countersigned:

Equiniti Trust Company, as Warrant Agent

OR

By: _____
Authorized Agent

Equiniti Trust Company, as Warrant Agent

By: _____
as Countersigning Agent

By: _____
Authorized Officer

[Reverse of Warrant Certificate]

CHESAPEAKE ENERGY CORPORATION

WARRANT CERTIFICATE

EVIDENCING

CLASS C WARRANTS TO PURCHASE COMMON STOCK

The Class C Warrants evidenced hereby are one of a duly authorized issue of Warrants of the Company designated as its Warrants to Purchase Common Shares ("**Warrants**"), limited in aggregate number to 13,717,420 initially issued under and in accordance with the Warrant Agreement, dated as of February 9, 2021 (the "**Warrant Agreement**"), between the Company and Equiniti Trust Company, as warrant agent (the "**Warrant Agent**", which term includes any successor thereto permitted under the Warrant Agreement), to which the Warrant Agreement and all amendments thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Warrant Agent, the Warrantholders of Warrant Certificates and the owners of the Warrants evidenced thereby and of the terms upon which the Warrant Certificates are, and are to be, countersigned and delivered. A copy of the Warrant Agreement shall be available at all reasonable times at the office of the Warrant Agent for inspection by the Warrantholder hereof.

Except as provided in the Warrant Agreement, all outstanding Warrants shall expire and all rights of the Warrantholders of Warrant Certificates evidencing such Warrants shall terminate and cease to exist, as of the earlier of (i) 5:00 p.m., New York time, on February 9, 2026 and (ii) the date of consummation of any Liquidity Event (the "**Expiration Time**").

If fewer than all the Warrants represented by a Warrant Certificate are exercised, [the Warrant Agent shall endorse the "Schedule of Decreases of Warrants" attached to the Global Warrant Certificate to reflect the Warrants being exercised.][6] [such Definitive Warrant Certificate shall be surrendered and a new Definitive Warrant Certificate of the same tenor and class and for the number of Warrants which were not exercised shall be executed by the Company upon the written order of the Warrantholder of this Warrant Certificate upon the cancellation hereof.][7]

The Warrant Certificates are issuable only in registered form in denominations of whole numbers of Warrants. Upon surrender at the office of the Warrant Agent and payment of the charges specified herein and in the Warrant Agreement, this Warrant Certificate may be exchanged for Warrant Certificates in other authorized denominations or the Transfer hereof may be registered in whole or in part in authorized denominations to one or more designated Transferees; provided, however, that such other Warrant Certificates issued upon exchange or registration of Transfer shall evidence the same aggregate number and class of Warrants as this Warrant Certificate. The Company shall cause to be kept at the office of the Warrant Agent the

[6] Include only on Global Warrant Certificate.

[7] Include only on Definitive Warrant Certificates.

Warrant Register in which, subject to such reasonable regulations as the Warrant Agent may prescribe and such regulations as may be prescribed by Law, the Company shall provide for the registration of Warrant Certificates and of Transfers or exchanges of Warrant Certificates. Issuance of the Warrant Certificates evidencing Warrants and issuance of Common Shares upon the exercise of the Warrants shall be made without charge for any documentary, stamp or similar issue or transfer tax or other incidental expense in respect of the issuance thereof, all of which taxes and expenses shall be paid by the Company; provided, however, the Company shall not be required to pay any tax that may be payable in respect of any Transfer involved in the issuance and delivery of Warrant Certificates evidencing such Warrants or Common Shares in book-entry form or any certificates for Common Shares or payment of cash or other property in a name or to any Person other than the Warrantholder of the Warrant Certificate surrendered upon exercise or Transfer, and the Company shall not be required to issue or deliver Warrant Certificates or Common Shares in book-entry form or any certificates for Common Shares or payment of cash or other property, as applicable, unless and until the Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have reasonably determined that such tax has been paid.

Prior to due presentment of this Warrant Certificate for registration of Transfer, the Company, the Warrant Agent and any agent of the Company or the Warrant Agent may treat the Person in whose name this Warrant Certificate is registered as the owner hereof for all purposes, and neither the Company, the Warrant Agent nor any such agent shall be affected by notice to the contrary.

The Warrant Agreement permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Warrantholders of Warrant Certificates under the Warrant Agreement at any time by the Company and the Warrant Agent with the consent of the Required Warrantholders.

Nothing contained in the Warrant Agreement or this Warrant Certificate shall be construed as conferring upon any Person, by virtue in and of itself of holding a Warrant Certificate evidencing any Warrant or having a beneficial interest in a Warrant, the right to vote, receive any dividend or other distribution, receive notice of, or attend, any meeting of stockholders or otherwise exercise any rights whatsoever, in each case, as a stockholder of the Company to the extent such vote, dividend, giving of notice, meeting or other exercise of rights (or, if applicable, the relevant Record Date therefor) precedes the Close of Business on the Exercise Date with respect to the exercise of such Warrant. No Warrantholder shall have any right not expressly conferred hereunder or under, or by applicable Law with respect to, the Warrant Certificate held by such holder.

This Warrant Certificate, each Warrant evidenced thereby and the Warrant Agreement shall be governed by and construed in accordance with the Laws of the State of New York.

All terms used in this Warrant Certificate which are defined in the Warrant Agreement shall have the meanings assigned to them in the Warrant Agreement. In the event of any conflict between this Warrant Certificate and the Warrant Agreement, the Warrant Agreement shall control.

Form of Exercise

[Address]

Attention:

Re: Warrant Agreement dated as of February 9, 2021 between Chesapeake Energy Corporation (the "**Company**") and Equiniti Trust Company, as Warrant Agent (as it may be supplemented or amended, the "**Warrant Agreement**")

The undersigned hereby irrevocably elects to exercise the right to exercise ____ Warrants and receive the consideration deliverable in exchange therefor pursuant to the following settlement method (check one):

Cash Settlement

Cashless Settlement

If Cash Settlement is elected, the undersigned shall tender payment of the Exercise Price therefor in accordance with instructions received from the Warrant Agent.

Please check below if this exercise is contingent upon a Liquidity Event in accordance with Section 3.2(e) of the Warrant Agreement.

This exercise is being made in connection with a Liquidity Event; provided, that in the event that such transaction shall not be consummated, then this exercise shall be deemed revoked.

THIS EXERCISE NOTICE MUST BE DELIVERED TO THE WARRANT AGENT PRIOR TO THE EXPIRATION TIME. THE WARRANT AGENT SHALL NOTIFY YOU OF THE ADDRESS AND PHONE NUMBER WHERE YOU CAN CONTACT THE WARRANT AGENT AND TO WHICH WARRANT EXERCISE NOTICES ARE TO BE SUBMITTED.

All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Warrant Agreement.

Dated: _____

_____
(Insert Social Security or Other Identifying Number of Warrantholder)

Name: _____
(Please Print)

Address: _____

_____

_____
Signature

(Signature must conform in all respects to name of Warrantholder as specified on the face of this Warrant Certificate and must bear a signature guarantee by a bank, trust company or member firm of a U.S. national securities exchange.)

Signature Guaranteed:

Instructions (i) as to denominations and names of Common Shares issuable upon exercise and as to delivery of such securities and any other property issuable upon exercise and (ii) if applicable, as to Warrant Certificates evidencing unexercised Warrants:

Assignment

(Form of Assignment To Be Executed If Warrantholder Desires To Transfer Warrant Certificate)

FOR VALUE RECEIVED _____ hereby sells, assigns and transfers unto

Please insert social security or
other identifying number

(Please print name and address including zip code)

the Warrants represented by the within Warrant Certificate and does hereby irrevocably constitute and appoint _____ Attorney, to transfer said Warrant Certificate on the books of the within-named Company with full power of substitution in the premises.

Dated: _____ Signature _____

(Signature must conform in all respects to name of Warrantholder as specified on the face of this Warrant Certificate and must bear a signature guarantee by a bank, trust company or member firm of a U.S. national securities exchange.)

[SCHEDULE A]

SCHEDULE OF DECREASES IN WARRANTS

The following decreases in the number of Warrants evidenced by this Global Warrant Certificate have been made:

Date	Amount of decrease in number of Warrants evidenced by this Global Warrant Certificate	Number of Warrants evidenced by this Global Warrant following such decrease	Signature of authorized signatory][8]

[8] Include only on Global Warrant Certificate.

EXHIBIT B

FORM OF EXERCISE NOTICE

[Address]

Attention: Transfer Department

Re: Warrant Agreement dated as of February 9, 2021 between Chesapeake Energy Corporation (the "**Company**") and Equiniti Trust Company, as Warrant Agent (as it may be supplemented or amended, the "**Warrant Agreement**").

The undersigned hereby irrevocably elects to exercise the right to exercise ____ Warrants and receive the consideration deliverable in exchange therefor pursuant to the following settlement method (check one):

Cash Settlement

Cashless Settlement

If Cash Settlement is elected, the undersigned shall tender payment of the Exercise Price therefor in accordance with instructions received from the Warrant Agent.

Please check below if this exercise is contingent upon a Liquidity Event in accordance with Section 3.2(e) of the Warrant Agreement.

This exercise is being made in connection with a Liquidity Event; provided, that in the event that such transaction shall not be consummated, then this exercise shall be deemed revoked.

THIS EXERCISE NOTICE MUST BE DELIVERED TO THE WARRANT AGENT PRIOR TO THE EXPIRATION TIME. THE WARRANT AGENT SHALL NOTIFY YOU OF THE ADDRESS AND PHONE NUMBER WHERE YOU CAN CONTACT THE WARRANT AGENT AND TO WHICH WARRANT EXERCISE NOTICES ARE TO BE SUBMITTED.

All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Warrant Agreement.

Dated: _____

_____
(Insert Social Security or Other Identifying Number of Warrantholder)

Name: _____
(Please Print)

Address: _____

_____

_____
Signature

(Signature must conform in all respects to name of Warrantholder as specified on the face of this Warrant Certificate and must bear a signature guarantee by a bank, trust company or member firm of a U.S. national securities exchange.)

Signature Guaranteed:

Instructions (i) as to denominations and names of Common Shares issuable upon exercise and as to delivery of such securities and any other property issuable upon exercise and (ii) if applicable, as to Warrant Certificates evidencing unexercised Warrants:

EXHIBIT C

Fee Schedule

The Company shall pay the Warrant Agent for performance of its services under this Warrant Agreement such compensation as shall be agreed in writing between the Company and the Warrant Agent.

Exhibit 10.6

INDEMNITY AGREEMENT

This Indemnity Agreement ("Agreement") is made as of _____, 20_____ by and between Chesapeake Energy Corporation, an Oklahoma corporation (the "Corporation"), and ("Indemnitee"). This Agreement supersedes and replaces any and all previous agreements between the Corporation and Indemnitee covering the subject matter of this Agreement.

RECITALS

WHEREAS, highly competent persons have become more reluctant to serve publicly-held corporations as directors and officers or in other capacities unless they are provided with adequate protection through insurance or indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the Corporation;

WHEREAS, the Board of Directors of the Corporation (the "Board") has determined that, in order to attract and retain qualified individuals, the Corporation will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Corporation and its subsidiaries from certain liabilities.

WHEREAS, Section 1031 of the General Corporation Act of the State of Oklahoma (the "Oklahoma Law") empowers the Corporation to indemnify and advance expenses to its officers, directors, employees and agents by agreement and to indemnify and advance expenses to persons who serve, at the request of the Corporation, as directors, officers, employees, or agents of other corporations or enterprises, and expressly provides that the indemnification provided by Section 1031 is not exclusive; and

WHEREAS, the Bylaws of the Corporation (as amended, the "Bylaws") and the Certificate of Incorporation of the Corporation (as amended, the "Certificate of Incorporation") provide for mandatory indemnification of its officers and directors to the fullest extent permitted by applicable law, subject to certain limitations specified in the Bylaws and Certificate of Incorporation, and the Corporation wishes to clarify and enhance the rights and obligations of the Corporation and the Indemnitee with respect to indemnification; and

WHEREAS, in order to induce and encourage highly experienced and capable persons such as the Indemnitee to serve and continue to serve as directors and officers of the Corporation and in other capacities with respect to the Corporation and its affiliates, and to otherwise promote the desirable end that such persons will resist what they consider unjustified lawsuits and claims made against them in connection with the good faith performance of their duties to the Corporation, with the knowledge that certain costs, judgments, liabilities and expenses incurred by them in their defense of such litigation are to be borne by the Corporation, the Board of the Corporation has determined that the following Agreement is reasonable and prudent to promote and ensure the best interests of the Corporation and its shareholders; and

WHEREAS, this Agreement is a supplement to and in furtherance of the Bylaws and the Certificate of Incorporation and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder; and

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Corporation and Indemnitee do hereby covenant and agree as follows:

Section 1. Service by Indemnitee. The Indemnitee will serve and/or continue to serve as a director or officer of the Corporation faithfully and to the best of the Indemnitee's ability so long as the Indemnitee is duly elected or appointed and until such time as the Indemnitee is removed, terminated, or tenders a resignation that is accepted by the Board.

Section 2. Definitions. As used in this Agreement:

(a) References to "agent" shall mean any person who is or was a director, officer, or employee of the Corporation or a subsidiary of the Corporation or other person authorized by the Corporation to act for the Corporation, to include such person serving in such capacity as a director, officer, employee, fiduciary or other official of another corporation, partnership, limited liability company, joint venture, trust or other enterprise at the request of, for the convenience of, or to represent the interests of the Corporation or a subsidiary of the Corporation.

(b) "Change of Control" means a change in control of the Corporation of a nature that would be required to be reported in response to Item 5.01 of Current Report on Form 8-K (or in response to any similar item on any similar schedule or form) promulgated under the Securities Exchange Act of 1934 (the "Act"), whether or not the Corporation is then subject to such reporting requirement; provided, however, that, without limitation, such a Change of Control shall be deemed to have occurred if after the effective date of such Change of Control (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Act) becomes the "beneficial owner" (as defined in Rule 13d-3 under the Act), directly or indirectly, of securities of the Corporation representing thirty percent (30%) or more of the combined voting power of the Corporation's then outstanding securities without the prior approval of at least two-thirds of the members of the Board of Directors in office immediately prior to such person attaining such percentage; (ii) the Corporation is a party to a merger, consolidation, sale of assets or other reorganization, or a proxy contest, as a consequence of which members of the Board of Directors in office immediately prior to such transaction or event constitute less than a majority of the Board of Directors thereafter; or (iii) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors (including for this purpose any new director whose election or nomination for election by the Corporation's shareholders was approved by a vote of at least two-thirds of the directors then still in office who were directors at the beginning of such period) cease for any reason to constitute at least a majority of the Board of Directors.

(c) "Corporate Status" describes the status of a person who is or was a director, officer, employee or agent of the Corporation or of any other corporation, limited liability company, partnership or joint venture, trust or other enterprise which such person is or was serving at the request of the Corporation.

(d) "Disinterested Director" shall mean a director of the Corporation who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(e) "Enterprise" shall mean the Corporation and any other corporation, limited liability company, partnership, joint venture, trust or other enterprise of which Indemnitee is or was serving at the request of the Corporation as a director, officer, trustee, partner, managing member, employee, agent or fiduciary.

(f) "Expenses" shall mean all reasonable attorneys' fees, retainers, court costs, transcript costs, fees of experts and other professionals, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, ERISA excise taxes and penalties, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also shall include (i) Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent, and (ii) for purposes of Section 14(d) only, Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement, by litigation or otherwise. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(g) "Independent Counsel" shall mean a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Corporation or Indemnitee in any matter material to either such party (other than with respect to matters concerning the Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Corporation or Indemnitee in an action to determine Indemnitee's rights under this Agreement. The Corporation agrees to pay the reasonable fees and expenses of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(h) The term "Proceeding" shall include any threatened, pending or completed action, suit, claim, counterclaim, cross claim, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Corporation or otherwise and whether of a civil, criminal, administrative, legislative, or investigative (formal or informal) nature, including any appeal therefrom, in which Indemnitee was, is or will be involved as a party, potential party, non-party witness or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Corporation, by reason of any action taken by him (or a failure to take action by him) or of any action (or failure to act) on his part while acting pursuant to his Corporate Status, in each case whether or not serving in such capacity at the time any liability or Expense is incurred for which indemnification, reimbursement, or advancement of Expenses can be provided under this Agreement. If the Indemnitee believes in good faith that a given situation

may lead to or culminate in the institution of a Proceeding, this shall be considered a Proceeding under this paragraph.

(i) Reference to "other enterprise" shall include employee benefit plans; references to "fines" shall include any excise tax assessed with respect to any employee benefit plan; references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in manner "not opposed to the best interests of the Corporation" as referred to in this Agreement.

Section 3. Indemnity in Third-Party Proceedings. The Corporation shall indemnify Indemnitee in accordance with the provisions of this Section 3 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding, other than a Proceeding by or in the right of the Corporation to procure a judgment in its favor. Pursuant to this Section 3, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses, judgments, fines and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines and amounts paid in settlement) actually and reasonably incurred by Indemnitee or on his behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation and, in the case of a criminal Proceeding had no reasonable cause to believe that his conduct was unlawful. The parties intend that this Agreement shall provide to the fullest extent permitted by law for indemnification in excess of that expressly permitted by statute, including, without limitation, any indemnification provided by the Certificate of Incorporation, the Bylaws, vote of its shareholders or disinterested directors or applicable law.

Section 4. Indemnity in Proceedings by or in the Right of the Corporation. The Corporation shall indemnify Indemnitee in accordance with the provisions of this Section 4 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding by or in the right of the Corporation to procure a judgment in its favor. Pursuant to this Section 4, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses actually and reasonably incurred by him or on his behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation. No indemnification for Expenses shall be made under this Section 4 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Corporation, unless and only to the extent that any court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification for such Expenses which the court shall deem proper.

Section 5. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provisions of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is a party to (or a participant in)

and is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Corporation shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Corporation shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with or related to each successfully resolved claim, issue or matter to the fullest extent permitted by law. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

Section 6. Indemnification For Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is, by reason of his Corporate Status, a witness or otherwise asked to participate in any Proceeding to which Indemnitee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith.

Section 7. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Corporation for some or a portion of Expenses, but not, however, for the total amount thereof, the Corporation shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

Section 8. Additional Indemnification.

(a) Notwithstanding any limitation in Sections 3, 4, or 5, the Corporation shall indemnify Indemnitee to the fullest extent permitted by applicable law if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Corporation to procure a judgment in its favor) against all Expenses, judgments, fines and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines and amounts paid in settlement) actually and reasonably incurred by Indemnitee in connection with the Proceeding.

(b) For purposes of Section 8(a), the meaning of the phrase “to the fullest extent permitted by applicable law” shall include, but not be limited to:

(i) to the fullest extent permitted by the provision of the Oklahoma Law that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to or replacement of the Oklahoma Law, and

(ii) to the fullest extent authorized or permitted by any amendments to or replacements of the Oklahoma Law adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

Section 9. Exclusions. Notwithstanding any provision in this Agreement, the Corporation shall not be obligated under this Agreement to make any indemnification payment in connection with any claim made against Indemnitee:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision; or

(b) for (i) an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Corporation within the meaning of Section 16(b) of the Exchange Act (as defined in Section 2(b) hereof) or similar provisions of state statutory law or common law, or (ii) any reimbursement of the Corporation by the Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by the Indemnitee from the sale of securities of the Corporation, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Corporation pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), or the payment to the Corporation of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act);

(c) except as provided in Section 14(d) of this Agreement, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Corporation or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Corporation provides the indemnification, in its sole discretion, pursuant to the powers vested in the Corporation under applicable law; or

(d) in connection with any claim made against Indemnitee if the Corporation brings an action contesting the right of Indemnitee to receive indemnification or a payment hereunder and establishes that (i) Indemnitee intentionally misrepresented or failed to disclose a material fact in making the request for indemnification or payment or (ii) such indemnification or payment is prohibited by applicable law (such event, a "Disqualifying Event"); *provided*, *however*, that in any such action the Corporation shall have the burden of proving the occurrence of any such Disqualifying Event; *provided*, *further*, that the reduction in the obligation of the Corporation to make any payment under this clause (ii) shall only be to the extent that such obligation is prohibited by applicable law.

Section 10. Advances of Expenses. Notwithstanding any provision of this Agreement to the contrary (other than Section 14(d)), the Corporation shall advance, to the extent not prohibited by law, the Expenses incurred by Indemnitee in connection with any Proceeding (or any part of any Proceeding) not initiated by Indemnitee, and such advancement shall be made within twenty (20) days after the receipt by the Corporation of a statement or statements requesting such advances from time to time, whether prior to or after final disposition of any Proceeding. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement. In accordance with Section 14(d), advances shall include any and all reasonable Expenses incurred pursuing an action to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Corporation to support the advances claimed. The Indemnitee shall qualify for advances upon the execution and delivery to the Corporation of this Agreement, which shall constitute an undertaking providing that the Indemnitee undertakes to repay the amounts advanced (without interest) to the extent that it is ultimately determined that Indemnitee

is not entitled to be indemnified by the Corporation. No other form of undertaking shall be required other than the execution of this Agreement. This Section 10 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 9.

Section 11. Procedure for Notification; Defense of Claim.

(a) Indemnitee shall notify the Corporation in writing of any matter with respect to which Indemnitee intends to seek indemnification or advancement of Expenses hereunder as soon as reasonably practicable following the receipt by Indemnitee of written notice. The written notification to the Corporation shall include a description of the nature of the Proceeding and the facts underlying the Proceeding. To obtain indemnification under this Agreement, Indemnitee shall submit to the Corporation a written request, including such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of such Proceeding. The omission by Indemnitee to notify the Corporation hereunder will not relieve the Corporation from any liability which it may have to Indemnitee under this Agreement or otherwise, and any delay in so notifying the Corporation shall not constitute a waiver by Indemnitee of any rights under this Agreement. The Secretary of the Corporation shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification.

(b) The Corporation will be entitled to participate in the Proceeding at its own expense.

(c) Except as otherwise provided in this Agreement, in the event the Corporation may be obligated to make any indemnity or payment in connection with a Proceeding, the Corporation shall be entitled to assume the defense of such Proceeding with counsel approved by Indemnitee, which approval shall not be unreasonably withheld, upon the delivery to Indemnitee of written notice of the Corporation's election to do so. After delivery of such notice, approval of such counsel by Indemnitee and the retention of such counsel by the Corporation, the Corporation will not be liable to Indemnitee for any fees or expenses of counsel subsequently incurred by Indemnitee with respect to the same Proceeding. Notwithstanding the Corporation's assumption of the defense of any such Proceeding, the Corporation shall be obligated to pay the fees and expenses of Indemnitee's counsel to the extent (i) the employment of counsel by Indemnitee is authorized by the Corporation, (ii) counsel for the Corporation or Indemnitee shall have reasonably concluded that there is a conflict of interest between the Corporation and Indemnitee in the conduct of any such defense such that Indemnitee needs to be separately represented, (iii) the Corporation is not financially or legally able to perform its indemnification obligations or (iv) the Corporation shall not have retained, or shall not continue to retain, such counsel to defend such Proceeding. The Corporation shall have the right to conduct such defense as it reasonably sees fit in its sole discretion. Regardless of any provision in this Agreement, Indemnitee shall have the right to employ counsel in any Proceeding at Indemnitee's personal expense. The Corporation shall not be entitled, without the consent of Indemnitee, to assume the defense of any claim brought by or in the right of the Corporation. Indemnitee shall give the Corporation such information and cooperation in connection with the Proceeding as may be reasonably appropriate. The Corporation shall not be liable to indemnify Indemnitee for any settlement of any Proceeding (or any part thereof) effected without the Corporation's prior

written consent, which shall not be unreasonably withheld. Subject to the limitations set forth in this Agreement, the Corporation shall have the right to settle any Proceeding (or any part thereof) without the consent of Indemnitee, provided, however, that the Corporation shall not settle any Proceeding (or any part thereof) in a manner that would impose any liability, penalty or admission of guilt or liability on Indemnitee without Indemnitee's written consent.

Section 12. Procedure Upon Application for Indemnification.

(a) Upon written request by Indemnitee for indemnification pursuant to Section 11(a), a determination, if required by applicable law, with respect to Indemnitee's entitlement thereto shall be made in the specific case: (i) if a Change of Control shall have occurred, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee; or (ii) if a Change of Control shall not have occurred, (A) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (C) if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee or (D) if so directed by the Board, by the shareholders of the Corporation; and, if it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Indemnitee shall reasonably cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or Expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Corporation (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Corporation indemnifies and agrees to hold Indemnitee harmless from any such costs or Expenses. The Corporation promptly will advise Indemnitee in writing with respect to any determination that Indemnitee is or is not entitled to indemnification, including a description with specificity of any reason or basis for which indemnification has been denied.

(b) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 12(a) hereof, the Independent Counsel shall be selected as provided in this Section 12(b). If a Change of Control shall not have occurred, the Independent Counsel shall be selected by the Board, and the Corporation shall give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change of Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Corporation advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Corporation, as the case may be, may, within ten (10) days after such written notice of selection shall have been given, deliver to the Corporation or to Indemnitee, as the case may be, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection shall set

forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within twenty (20) days after the later of submission by Indemnitee of a written request for indemnification pursuant to Section 11(a) hereof and the final disposition of the Proceeding, no Independent Counsel shall have been selected and not objected to, either the Corporation or Indemnitee may petition a court for resolution of any objection which shall have been made by the Corporation or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by such court or by such other person as such court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 12(a) of this Agreement. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 14(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 13. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification under this Agreement, the person or persons or entity making such determination shall, to the fullest extent not prohibited by law, presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 11(a) of this Agreement, and the Corporation shall, to the fullest extent not prohibited by law, have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Corporation (including by its directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Corporation (including by its directors or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) Subject to Section 14(e), if the person, persons or entity empowered or selected under Section 12 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Corporation of the request therefor, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by law, be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such 60-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto; and provided, further, that the foregoing provisions of this Section

13(b) shall not apply (i) if the determination of entitlement to indemnification is to be made by the shareholders pursuant to Section 12(a) of this Agreement and if (A) within fifteen (15) days after receipt by the Corporation of the request for such determination the Board has resolved to submit such determination to the shareholders for their consideration at an annual meeting thereof to be held within seventy-five (75) days after such receipt and such determination is made thereat, or (B) a special meeting of shareholders is called within fifteen (15) days after such receipt for the purpose of making such determination, such meeting is held for such purpose within sixty (60) days after having been so called and such determination is made thereat, or (ii) if the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 12(a) of this Agreement.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his conduct was unlawful.

(d) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the directors or officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with the reasonable care by the Enterprise. The provisions of this Section 13(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(e) The knowledge and/or actions, or failure to act, of any director, officer, trustee, partner, managing member, fiduciary, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

Section 14. Remedies of Indemnitee.

(a) Subject to Section 14(e), in the event that (i) a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 10 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 12(a) of this Agreement within ninety (90) days after receipt by the Corporation of the request for indemnification, (iv) payment of indemnification is not made pursuant to Section 5, 6 or 7 or the last sentence of Section 12(a) of this Agreement within ten (10) days after receipt by the Corporation of a written request therefor, (v) payment of indemnification pursuant to Section 3, 4 or 8 of this Agreement is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, or (vi) in the event that the Corporation or any other person takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding

designed to deny, or to recover from, the Indemnitee the benefits provided or intended to be provided to the Indemnitee hereunder, Indemnitee shall be entitled to an adjudication by a court of his entitlement to such indemnification or advancement of Expenses. Alternatively, Indemnitee, at his option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee shall commence such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 14(a); provided, however, that the foregoing clause shall not apply in respect of a proceeding brought by Indemnitee to enforce his rights under Section 5 of this Agreement. The Corporation shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 12(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 14 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 14 the Corporation shall have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be.

(c) If a determination shall have been made pursuant to Section 12(a) of this Agreement that Indemnitee is entitled to indemnification, the Corporation shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 14, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) The Corporation shall, to the fullest extent not prohibited by law, be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 14 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Corporation is bound by all the provisions of this Agreement. It is the intent of the Corporation that, to the fullest extent permitted by law, the Indemnitee not be required to incur legal fees or other Expenses associated with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement by litigation or otherwise because the cost and expense thereof would substantially detract from the benefits intended to be extended to the Indemnitee hereunder. The Corporation shall, to the fullest extent permitted by law, indemnify Indemnitee against any and all Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Corporation of a written request therefor) advance, to the extent not prohibited by law, such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advance of Expenses from the Corporation under this Agreement or under any directors' and officers' liability insurance policies maintained by the Corporation if, in the case of indemnification, Indemnitee is wholly successful on the underlying claims; if Indemnitee is not wholly successful on the underlying claims, then such indemnification shall be only to the extent Indemnitee is successful on such underlying claims or otherwise as permitted by law, whichever is greater.

(e) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement of Indemnitee to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding.

Section 15. Non-exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The rights of indemnification and to receive advancement of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of shareholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Oklahoma Law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Bylaws, Certificate of Incorporation and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) To the extent that the Corporation maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Enterprise, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such current or former director, officer, employee or agent under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Corporation has director and officer liability insurance in effect, the Corporation shall give prompt notice of such claim or of the commencement of a Proceeding, as the case may be, to the insurers in accordance with the procedures set forth in the respective policies. The Corporation shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(c) In the event of any payment under this Agreement, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Corporation to bring suit to enforce such rights.

(d) The Corporation shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable (or for which advancement is provided under this Agreement) under this Agreement if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(e) The Corporation's obligation to indemnify or advance Expenses under this Agreement to Indemnitee who is or was serving at the request of the Corporation as a director, officer, trustee, partner, managing member, fiduciary, employee or agent of any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such other corporation, limited liability company, partnership, joint venture, trust or other enterprise.

(f) The Corporation hereby recognizes that Indemnitee may have certain rights to indemnification, advancement of expenses and/or insurance provided by one or more persons with whom or which such Indemnitee may be associated (a "Third-Party Indemnitor"), and the Corporation hereby acknowledges and agrees (i) that it is the indemnitor of first resort (i.e., its obligations to such persons are primary and any obligation of the Third-Party Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such persons are secondary), (ii) that it shall be required to advance the full amount of expenses incurred by such persons and shall be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and required by the terms of the Certificate of Incorporation, Bylaws or this Agreement (or any other agreement between the Corporation and such persons), without regard to any rights such persons may have against the Third-Party Indemnitors, and (iii) that it that it irrevocably waives, relinquishes and releases the Third-Party Indemnitors from any and all claims against the Third-Party Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Corporation further agrees that no advancement or payment by the Third-Party Indemnitors on behalf of such persons with respect to any claim for which such persons have sought indemnification from the Corporation shall affect the foregoing and the Third-Party Indemnitors shall be subrogated to the extent of such advancement or payment to all of the rights of recovery of such persons against the Corporation. The Corporation and each such person agree that the Third-Party Indemnitors are express third party beneficiaries of the terms of this Agreement.

Section 16. Duration of Agreement. This Agreement shall continue until and terminate upon the later of: (a) ten (10) years after the date that Indemnitee shall have ceased to serve in any position of Corporate Status or (b) one (1) year after the final termination of any Proceeding then pending in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder and of any proceeding commenced by Indemnitee pursuant to Section 14 of this Agreement relating thereto. The indemnification and advancement of expenses rights provided by or granted pursuant to this Agreement shall be binding upon and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Corporation), shall continue as to an Indemnitee who has ceased to be a director, officer, employee or agent of the Corporation or of any other Enterprise, and shall inure to the benefit of Indemnitee and his or her spouse, assigns, heirs, devisees, executors and administrators and other legal representatives.

Section 17. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal

or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 18. Enforcement.

(a) The Corporation expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director or officer of the Corporation, and the Corporation acknowledges that Indemnitee is relying upon this Agreement in serving as a director or officer of the Corporation.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; provided, however, that this Agreement is a supplement to and in furtherance of the Certificate of Incorporation, the Bylaws and applicable law, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

(c) If a claim under this Agreement is not paid in full by the Corporation within sixty (60) days after a written claim, pursuant to Section 11(a), has been received by the Corporation, the Indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the Indemnitee shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the Indemnitee has not met the standard of conduct which makes it permissible under the Oklahoma Law for the Corporation to indemnify the Indemnitee for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its board of directors, independent counsel or shareholders) to have made a determination prior to the commencement of such action that indemnification of the Indemnitee is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the Oklahoma Law, nor an actual determination by the Corporation (including its board of directors, independent counsel or shareholders) that the Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the Indemnitee has not met the applicable standard of conduct. If a determination shall have been made pursuant to this paragraph (c) that the Indemnitee is entitled to indemnification, the Corporation shall be bound by such determination in any judicial proceeding commenced pursuant to this paragraph (c). The Corporation shall be precluded from asserting in any judicial proceeding commenced pursuant to this paragraph (c) that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in such proceeding that the Corporation is bound by all the provisions of this Agreement.

Section 19. Modification and Waiver. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement nor shall any waiver constitute a continuing waiver.

Section 20. Notice by Indemnitee. Indemnitee agrees to notify the Corporation in writing as soon as reasonably practicable upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses covered hereunder. The failure of Indemnitee to so notify the Corporation shall not relieve the Corporation of any obligation which it may have to the Indemnitee under this Agreement or otherwise.

Section 21. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, (b) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed, (c) mailed by reputable overnight courier and receipted for by the party to whom said notice or other communication shall have been directed or (d) sent by facsimile transmission, with receipt of written confirmation (email to suffice) that such transmission has been received:

(a) If to Indemnitee, at the address indicated on the signature page of this Agreement, or such other address as Indemnitee shall provide to the Corporation.

(b) If to the Corporation to

Chesapeake Energy Corporation
6100 North Western Avenue
Oklahoma City, Oklahoma 73118

or to any other address as may have been furnished to Indemnitee by the Corporation.

Section 22. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Corporation, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Corporation and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Corporation (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 23. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Oklahoma, without regard to its conflict of laws rules. The Corporation

and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in a state or federal court in Oklahoma County, Oklahoma and not any other court, (ii) consent to submit to the exclusive jurisdiction of any court in Oklahoma County for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in any court in Oklahoma County, and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in any court in Oklahoma County has been brought in an improper or inconvenient forum.

Section 24. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 25. Miscellaneous. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate. The headings of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

[Signature page to follow.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the day and year first above written.

CHESAPEAKE ENERGY CORPORATION

By: _____

INDEMNITY

By: _____

[Signature page to the Indemnity Agreement]

CHESAPEAKE ENERGY CORPORATION 2021 LONG TERM INCENTIVE PLAN

1. PURPOSE

Section 1.1 *Purpose*. This Long Term Incentive Plan is established by Chesapeake Energy Corporation (the "*Company*") to foster and promote the sustained progress, growth and profitability of the Company by:

(a) attracting, retaining and motivating Employees and Non-Employee Directors;

(b) allowing Employees and Non-Employee Directors to acquire a proprietary and vested interest in the growth and performance of the Company;

(c) providing incentives and rewards to Employees and Non-Employee Directors who are in a position to contribute materially to the success and long-term objectives of the Company; and

(d) aligning the financial interests of Employees and Non-Employee Directors with those of the Company's shareholders.

Section 1.2 *Effective Date.* The Plan is effective as of February 9, 2021. The authority to issue Awards under the Plan will terminate at 11:59 p.m. Central Time on February 9, 2025 and the remaining terms of the Plan will continue in effect thereafter until all matters relating to the exercise and settlement of Awards and administration of the Plan have been completed.

2. DEFINITIONS

Section 2.1 "*Affiliated Entity*" means any partnership or limited liability company in which at least 50% of voting power thereof is owned or controlled, directly or indirectly, by the Company or one or more of its Subsidiaries or Affiliated Entities or a combination thereof.

Section 2.2 "*Appreciation*" means, with respect to a SAR (as hereafter defined), the amount by which the Fair Market Value of a share of Common Stock on the date of exercise of the SAR exceeds the Fair Market Value of a share of Common Stock on the Date of Grant of the SAR.

Section 2.3 "*Award*" means, individually or collectively, any Option, SAR, Performance Share, Restricted Stock, Restricted Stock Unit, or Other Stock Award granted under the Plan to an Eligible Person pursuant to such terms, conditions, restrictions, and/or limitations, if any, as the applicable Committee may establish by the Award Agreement or otherwise.

Section 2.4 "*Award Agreement*" means any written or electronic instrument that establishes the terms, conditions, restrictions, and/or limitations applicable to an Award in addition to those established by this Plan and by the Committee's exercise of its administrative powers.

Section 2.5 "*Board*" means the Board of Directors of the Company.

Section 2.6 "*Cause*" shall have the meaning ascribed to such term in any employment, service or similar agreement between the Company, a Subsidiary or an Affiliated Entity and the

Eligible Person; provided, that, if there is no such agreement or the agreement does not provide for a definition of "Cause", "Cause" shall mean the occurrence of either of the following, unless otherwise determined by the Committee:

(i) the willful and continued failure of the Participant to perform substantially the Participant's duties with the Company or one of its affiliates (other than any such failure resulting from incapacity due to physical or mental illness), after a written demand for substantial performance is delivered to the Participant by the Board or the Chief Executive Officer of the Company which specifically identifies the manner in which the Board or Chief Executive Officer believes that the Participant has not substantially performed the Participant's duties, or

(ii) the willful engaging by the Participant in illegal conduct or gross misconduct which is materially and demonstrably injurious to the Company. For purposes of this provision, no act, or failure to act, on the part of the Participant shall be considered "willful" unless it is done, or omitted to be done, by the Participant in bad faith or without reasonable belief that the Participant's action or omission was in the best interests of the Company. Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board or upon the instructions of the Chief Executive Officer or based upon the advice of counsel for the Company shall be conclusively presumed to be done, or omitted to be done, by the Participant in good faith and in the best interests of the Company.

Section 2.7 *"Change of Control"* means the occurrence of any of the following:

(i) the acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) (a "*Person*") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 50% or more of either (A) the then outstanding shares of common stock of the Company (the "*Outstanding Company Common Stock*") or (B) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "*Outstanding Company Voting Securities*"). For purposes of this Section 2.7 the following acquisitions by a Person will not constitute a Change of Control: (1) any acquisition by the Company; (2) any redemption, share acquisition or other purchase of shares directly or indirectly by the Company; (3) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company; or (4) any acquisition by any corporation pursuant to a transaction which complies with clauses (A), (B) and (C) of paragraph (iii) below;

(ii) during any period of not more than 24 months, the individuals who constitute the board of directors (the "*Incumbent Board*") of the Company as of the beginning of such 24 month period cease for any reason to constitute at least a majority of the board of directors. Any individual becoming a director whose election, or nomination for election by the Company's shareholders, is approved by a vote of at least a majority of the directors then comprising the Incumbent Board will be considered a member of the Incumbent Board, but any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Incumbent Board will not be deemed a member of the Incumbent Board;

(iii) the consummation of a reorganization, merger, consolidation or sale or other disposition of all or substantially all of the assets of the Company (a "*Business Combination*"), unless following such Business Combination: (A) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business

Combination beneficially own, directly or indirectly, more than 60% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be, (B) no Person (excluding any corporation resulting from such Business Combination or any employee benefit plan (or related trust) of the Company or such corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 50% or more of, respectively, the then outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such corporation except to the extent that such ownership existed prior to the Business Combination and (C) at least a majority of the members of the board of directors of the corporation resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination; or

(iv) the approval by the shareholders of the Company of a complete liquidation or dissolution of the Company.

Notwithstanding any provision of this Section 2.7, (a) in no event may the transaction related to the Company's reorganization under Chapter 7 or Chapter 11 of the Bankruptcy Code constitute a Change of Control and (b) for purposes of an Award that provides for a deferral of compensation under Section 409A of the Code, to the extent the impact of a Change of Control on such Award would subject a Participant to additional taxes under Section 409A of the Code, a Change of Control described in subsection (i), (ii), (iii) or (iv) above with respect to such Award must also constitute a "change in the ownership of a corporation," "change in the effective control of a corporation," or a "change in the ownership of a substantial portion of a corporation's assets" within the meaning of Section 409A of the Code, as applied to the Company.

Section 2.8 *"Code"* means the Internal Revenue Code of 1986, as amended. Reference in the Plan to any Section of the Code shall be deemed to include any amendments or successor provisions to such Section and any regulations under such Section.

Section 2.9 *"Committee"* means the Compensation Committee of the Board (or any successor committee) or any other committee designated by the Board. If no committee is designated by the Board to administer the Plan, the term "Committee" shall be deemed to refer to the Board for all purposes under the Plan.

Section 2.10 *"Common Stock"* means the common stock, par value $0.01 per share, of the Company.

Section 2.11 *"Date of Grant"* means the date on which the grant of an Award is made by the Committee.

Section 2.12 *"Disability"* has the meaning set forth in Section 409(A)(a)(2)(C) of the Code.

Section 2.13 *"Eligible Person"* means any Employee or Non-Employee Director.

Section 2.14 *"Employee"* means any employee of the Company, a Subsidiary or an Affiliated Entity or any person to whom an offer of employment with the Company, a Subsidiary or an Affiliated Entity is extended, as determined by the Committee.

Section 2.15 *"Exchange Act"* means the Securities Exchange Act of 1934, as amended.

Section 2.16 *"Executive Officer Participants"* means Participants who are subject to the provisions of Section 16 of the Exchange Act with respect to the Common Stock.

Section 2.17 *"Fair Market Value"* means, as of any day, the closing price of the Common Stock on such day (or on the next preceding business day, if such day is not a business day or if no trading occurred on such day) as reported on the Nasdaq Global Select Market or on such other securities exchange or reporting system as may be designated by the Committee. In the event that the price of a share of Common Stock shall not be so reported, the Fair Market Value of a share of Common Stock shall be determined by the Committee in its absolute discretion.

Section 2.18 *"Incentive Stock Option"* means an Option within the meaning of Section 422 of the Code.

Section 2.19 *"Non-Employee Director"* shall have the meaning set forth in Rule 16b-3, or any successor rule, promulgated under Section 16 of the Exchange Act.

Section 2.20 "*Non-Executive Officer Participants*" means Participants who are not subject to the provisions of Section 16 of the Exchange Act.

Section 2.21 *"Nonqualified Stock Option"* means an Option to purchase shares of Common Stock which is not an Incentive Stock Option within the meaning of Section 422(b) of the Code.

Section 2.22 *"Option"* means an Incentive Stock Option or Nonqualified Stock Option.

Section 2.23 *"Other Stock Award"* means any right granted to a Participant by the Committee under Section 8.1 of the Plan.

Section 2.24 *"Participant"* means an Eligible Person to whom an Award has been granted by the Committee under the Plan.

Section 2.25 *"Performance Award"* means any award of Performance Shares granted by the Committee under Section 7 of the Plan.

Section 2.26 *"Performance Share"* means the Common Stock or a unit having a value equivalent to the value of a share of Common Stock subject to a Performance Award granted under Section 7 of the Plan, which may be delivered or, with respect to a unit, the value of which may be delivered, to the Participant upon the achievement of such performance goals during the Performance Period as specified by the Committee.

Section 2.27 *"Plan"* means the Chesapeake Energy Corporation 2021 Long Term Incentive Plan.

Section 2.28 *"Restricted Stock"* means the Common Stock issued under Section 5 which is subject to any restrictions that the Committee, in its discretion, may impose.

Section 2.29 *"Restricted Stock Unit"* means the right granted under Section 6 of the Plan to receive shares of Common Stock (or the equivalent value in cash if the Committee so provides) in the future, which is subject to certain restrictions and to risk of forfeiture.

Section 2.30 *"SAR"* means a Stock Appreciation Right.

Section 2.31 *"Shareholder Approval"* means approval by the holders of a majority of the outstanding shares of Common Stock, present or represented and entitled to vote at a meeting called for such purposes.

Section 2.32 *"Stock Appreciation Right"* means a right, granted under Section 4, to an amount equal to any increase in the Fair Market Value of the Common Stock between the date on which the Stock Appreciation Right is granted and the date on which the right is exercised.

Section 2.33 *"Subsidiary"* shall have the same meaning set forth in Section 424(f) of the Code.

3. ADMINISTRATION

Section 3.1 *Administration of the Plan; the Committee*. The Compensation Committee shall have overall authority to administer the Plan. The Board may designate another committee or committees (which may consist of one or more executive officers of the Company) to administer the Plan with respect to Non-Executive Officer Participants, subject to any terms or conditions established by the Committee. Hereafter, "Committee" shall mean the Compensation Committee, except when used in reference to Awards granted to Non-Executive Officer Participants, "Committee" shall mean any applicable committee designated by the Board.

Unless otherwise provided in the bylaws of the Company or resolutions adopted from time to time by the Board establishing the Committee, the Board may from time to time remove members from, or add members to, the Committee. Vacancies on the Committee, however caused, shall be filled by the Board. The Committee shall hold meetings at such times and places as it may determine. A majority of the Committee shall constitute a quorum, and the acts of a majority of the members present at any meeting at which a quorum is present shall be the valid acts of the Committee. Any action which may be taken at a meeting of the Committee may be taken without a meeting if all the members of the Committee consent to the action in writing. Although the Committee is generally responsible for the administration of the Plan, the Board in its sole discretion may take any action under the Plan that would otherwise be the responsibility of the Committee, except as such action pertains to the administration of Awards to Non-Employee Directors.

Subject to the provisions of the Plan, the Committee shall have the authority to:

(a) Select the Eligible Persons to participate in the Plan.

(b) Determine the time or times when Awards will be granted.

(c) Determine the form of Award, the number of shares of Common Stock subject to any Award, all the terms, conditions (including performance requirements), restrictions and/or limitations, if any, of an Award, including the time and conditions of exercise or vesting, and the terms of any Award Agreement, which may include the waiver or amendment of prior terms and conditions or acceleration of the vesting or exercise of an Award under certain circumstances determined by the Committee (subject to Section 9 of the Plan). However, nothing in this Section

3.1 shall be construed to permit the repricing of any outstanding Award in violation of Section 4.3.

(d) Determine whether Awards will be granted singly or in combination.

(e) Determine whether, to what extent and under what circumstances Awards may be settled in cash or Common Stock.

(f) Determine whether any conditions applicable to an Award have been met and whether an Award will be paid at the end of a Performance Period.

(g) Employ attorneys, consultants, accountants and other advisors as deemed necessary or appropriate by the Committee.

(h) Take any and all other action it deems necessary or advisable for the proper operation or administration of the Plan.

Section 3.2 *Committee to Make Rules and Interpret Plan.* The Committee in its sole discretion shall have the authority, subject to the provisions of the Plan, to establish, adopt, or revise such rules and regulations and to make all such determinations relating to the Plan as it may deem necessary or advisable for the administration of the Plan. The Committee's interpretation of the Plan or any Awards granted pursuant hereto and all decisions and determinations by the Committee with respect to the Plan shall be final, binding, and conclusive on all parties, unless otherwise determined by the Board.

Section 3.3 *Shares Subject to the Plan.* Subject to adjustment as provided in Section 9.1, the aggregate number of shares of Common Stock which may be issued pursuant to Awards under the Plan will not exceed 6,800,000 shares of Common Stock. Any of the authorized shares of Common Stock may be used for any of the types of Awards described in the Plan. No more than 6,800,000 shares of Common Stock may be issued pursuant to Incentive Stock Options. Common Stock delivered pursuant to an Award under the Plan may consist, in whole or in part, of authorized and unissued shares or treasury shares. The Committee, in its sole discretion, shall determine the manner in which fractional shares arising under this Plan are treated. Additional restrictions or adjustments with respect to shares subject to the Plan are as follows:

(a) Subject to adjustment as provided in Section 9.1, the aggregate number of shares of Common Stock pursuant to Awards granted to any Non-Employee Director in any calendar year under this Plan may not exceed a number of shares of Common Stock with a total value in excess of $500,000 (calculating the value of any Awards based on the grant date fair value for financial reporting purposes), provided that, for any calendar year in which a Non-Employee Director (i) first commences service on the Board, (ii) serves on a special committee of the Board, or (iii) serves as lead director or chairman of the Board, such limit shall be $750,000.

(b) If any shares of Common Stock subject to an Award are forfeited, an Award expires or an Award that by its terms may be cash settled is settled for cash (in whole or in part), the shares of Common Stock subject to such Award shall again be available for grant under the Plan; provided, if an Award is settled for cash and shares of Common Stock only the portion of the Award that is settled for cash shall again be available for grant under the Plan. In the event that withholding tax liabilities arising from an Award are satisfied by tendering of shares of Common Stock (either actually or by attestation) or by withholding of shares of Common Stock by the Company, the shares of Common Stock so tendered or withheld shall not be added to the

shares of Common Stock available for Awards under the Plan. Notwithstanding anything to the contrary contained herein, the following shares of Common Stock shall not be added to the shares of Common Stock authorized for grant under Section 3.3: (i) shares of Common Stock tendered by the Participant or withheld by the Company in payment of the purchase price of an Option and (ii) shares of Common Stock subject to a Stock Appreciation Right that are not issued in connection with the stock settlement of the Stock Appreciation Right on exercise thereof.

4. STOCK OPTIONS AND STOCK APPRECIATION RIGHTS

Section 4.1 *Grant of Options and SARs.* The Committee may, from time to time, subject to the provisions of the Plan and such other terms and conditions as it may determine, grant Nonqualified Stock Options and Stock Appreciation Rights (SARs) to Eligible Persons and Incentive Stock Options to Employees. Each grant of an Option or SAR shall be evidenced by an Award Agreement and shall contain such terms and conditions and be in such form as the Committee may from time to time approve, subject to the requirements of Section 4.2.

Section 4.2 *Conditions of Options and SARs*. Each Option and SAR so granted shall be subject to the following conditions:

(a) *Exercise Price.* As limited by Section 4.2(e) below, the Award Agreement for each Option and SAR shall state the exercise price set by the Committee on the Date of Grant. No Option or SAR shall be granted at an exercise price which is less than the Fair Market Value of the Common Stock on the Date of Grant.

(b) *Exercise of Options and SARs.* Options and SARs granted under the Plan shall be exercisable, in whole or in such installments and at such times, and shall expire at such time, as shall be provided by the Committee in the Award Agreement.

(c) *Form of Payment.* The payment of the exercise price of an Option by the Participant shall be made in cash, shares of Common Stock, a combination thereof or in such other manner as the Committee may specify in the applicable Award Agreement. The payment of the Appreciation associated with the exercise of a SAR shall be made by the Company in shares of Common Stock or cash as determined by the Committee.

(d) *Term of Option or SAR.* The term of an Option or SAR shall be determined by the Committee and specified in the applicable Award Agreement, except that no Option or SAR shall be exercisable after the expiration of ten years from the Date of Grant.

(e) *Special Restrictions Relating to Incentive Stock Options*. Options issued in the form of Incentive Stock Options shall only be granted to Employees of the Company or a Subsidiary and not to Employees of an Affiliated Entity unless such entity is classified as a “disregarded entity” of the Company or the applicable Subsidiary under the Code. In addition to being subject to all applicable terms, conditions, restrictions and/or limitations established by the Committee, Options issued in the form of Incentive Stock Options shall comply with the requirements of Section 422 of the Code (or any successor Section thereto), including, without limitation, the requirement that the exercise price of an Incentive Stock Option not be less than 100% of the Fair Market Value of the Common Stock on the Date of Grant, the requirement that each Incentive Stock Option, unless sooner exercised, terminated or canceled, expire no later than ten years from its Date of Grant, and the requirement that the aggregate Fair Market Value (determined on the Date of Grant) of the Common Stock with respect to which Incentive Stock Options are exercisable for the first time by a Participant during any calendar year (under this

Plan or any other plan of the Company or any Subsidiary) not exceed $100,000. Incentive Stock Options which are in excess of the applicable $100,000 limitation will be automatically recharacterized as Nonqualified Stock Options. No Incentive Stock Options shall be granted to any Employee if, immediately before the grant of an Incentive Stock Option, such Employee owns more than 10% of the total combined voting power of all classes of stock of the Company or its Subsidiaries (as determined in accordance with the stock attribution rules contained in Sections 422 and 424(d) of the Code) unless the exercise price is at least 110% of the Fair Market Value of the Common Stock subject to the Incentive Stock Option, and such Incentive Stock Option by its terms is exercisable no more than five years from the date such Incentive Stock Option is granted.

(f) *Shareholder Rights*. No Participant shall have any rights as a shareholder with respect to any share of Common Stock subject to an Option or SAR prior to the purchase or receipt of such share of Common Stock by exercise of the Option or SAR. In addition, no Option or SAR granted under the Plan shall include any dividend equivalents.

Section 4.3 *No Repricing.* Except for adjustments made pursuant to Section 9.1, in no event will the Committee, without first obtaining Shareholder Approval, (i) decrease the exercise price of an Option or SAR after the Date of Grant; (ii) accept for surrender to the Company any outstanding Option or SAR granted under the Plan as consideration for the grant of a new Option or SAR with a lower exercise price; or (iii) repurchase from Participants any outstanding Options or SARs that have an exercise price per share higher than the then current Fair Market Value of a share of Common Stock.

5. RESTRICTED STOCK AWARDS

Section 5.1 *Grant of Restricted Stock.* The Committee may, from time to time, subject to the provisions of the Plan and such other terms and conditions as it may determine, grant Restricted Stock to any Eligible Person. Restricted Stock shall be awarded in such number, for such purchase price (if any) and at such times during the term of the Plan as the Committee shall determine. Each grant of Restricted Stock shall be evidenced by an Award Agreement and shall contain such terms and conditions and be in such form as the Committee may from time to time approve, subject to the requirements of Section 5.2. Restricted Stock issued pursuant to a Restricted Stock Award may be evidenced in such manner as the Committee deems appropriate, including, without limitation, a book-entry registration or issuance of a stock certificate or certificates into escrow until the restrictions associated with such Award are satisfied.

Section 5.2 *Conditions of Restricted Stock Awards* The grant of Restricted Stock shall be subject to the following:

(a) *Restriction Period.* Each Restricted Stock Award shall require the holder to remain in the employment or otherwise be classified as an Eligible Person (or in the case of a Non-Employee Director, remain a director of the Company, a Subsidiary, or an Affiliated Entity) for a prescribed period (the "*Restriction Period*"). The Committee shall determine the Restriction Period or Periods that shall apply to the shares of Common Stock covered by each Award or portion thereof. In addition to any time vesting conditions determined by the Committee, Restricted Stock may be subject to the achievement by the Company of specified performance measures or other individual criteria as determined by the Committee. At the end of the Restriction Period, assuming the fulfillment of any other specified vesting conditions, the restrictions imposed by the Committee shall lapse with respect to the shares of Common Stock covered by the Award or portion thereof.

(b) *Forfeiture.* Except as otherwise determined by the Committee, upon termination of service or employment during the Restriction Period, all shares of Restricted Stock still subject to forfeiture shall be forfeited by the Participant and any purchase price paid by the Participant shall be returned to such Participant.

(c) *Shareholder Rights.* During any Restriction Period, the Committee may, in its discretion, grant to or withhold from the holder of Restricted Stock all or any of the rights of a shareholder with respect to the shares, including, but not by way of limitation, the right to vote such shares or to receive dividends. If any dividends or other distributions are paid in shares of Common Stock and distributed to the holder of Restricted Stock, all such shares shall be subject to the same restrictions on transferability as the shares of Common Stock subject to the Award with respect to which they were paid.

(d) *Minimum Vesting Condition*. The minimum Restriction Period applicable to any Restricted Stock granted to an Employee that is not subject to performance criteria restricting the vesting of the Award shall be one year from the Date of Grant (subject to the provisions of Article 9).

6. RESTRICTED STOCK UNITS

Section 6.1 *Grant of Restricted Stock Units.* The Committee may, from time to time, subject to the provisions of the Plan and such other terms and conditions as it may determine, grant Restricted Stock Units to any Eligible Person. Restricted Stock Units shall be awarded in such number and at such times during the term of the Plan as the Committee shall determine. Each grant of Restricted Stock Units shall be evidenced by an Award Agreement and shall contain such terms and conditions and be in such form as the Committee may from time to time approve, subject to the requirements of Section 6.2.

Section 6.2 *Conditions of Restricted Stock Unit Awards* The grant of Restricted Stock Units shall be subject to the following:

(a) *Restriction Period.* Each Restricted Stock Unit Award shall require the holder to remain in the employment or otherwise be classified as an Eligible Person (or in the case of a Non-Employee Director, remain a director of the Company, a Subsidiary, or an Affiliated Entity) for the Restriction Period. The Committee shall determine the Restriction Period or Periods that shall apply to each Award. In addition to any time vesting conditions determined by the Committee, Restricted Stock Units may be subject to the achievement by the Company of specified performance measures or other individual criteria as determined by the Committee.

(b) *Forfeiture.* Except as otherwise determined by the Committee, upon termination of service or employment during the Restriction Period, all Restricted Stock Units still subject to forfeiture shall be forfeited by the Participant.

(c) *Shareholder Rights.* Restricted Stock Units shall not entitle a Participant to any of the rights of a shareholder with respect to the shares. Provided, however, the Committee may grant dividend equivalents with respect to Restricted Stock Units granted hereunder.

(d) *Minimum Vesting Condition*. The minimum Restriction Period applicable to any Restricted Stock Units granted to an Employee that is not subject to performance criteria restricting the vesting of the Award shall be one year from the Date of Grant (subject to the provisions of Article 9).

7. PERFORMANCE AWARDS

Section 7.1 *Grant of Performance Shares*. The Committee may, from time to time, subject to the provisions of the Plan and such other terms and conditions as it may determine, grant Performance Shares to any Eligible Person. Performance Shares shall be awarded in such number and at such times during the term of the Plan as the Committee shall determine. Each Performance Award shall be evidenced by an Award Agreement and shall contain such terms and conditions and be in such form as the Committee may from time to time approve, subject to the requirements of Section 7.2.

Section 7.2 *Conditions of Performance Awards.* The grant of Performance Shares shall be subject to the following:

(a) *Performance Period.* Performance Shares will be subject to the achievement of one or more performance goals by the Company or the Participant individually, measured for a prescribed period (the "*Performance Period*"), as specified by the Committee, such Performance Period to be not less than one year in duration. Such performance goals may be based upon the Company's achievement of performance measures or other individual criteria.

(b) *Payment Respecting Performance Shares*. Performance Shares shall be earned to the extent that their terms and conditions are met, as certified by the Committee. The form and timing of payment for Performance Shares earned shall be determined by the Committee and specified in the Award Agreement.

(c) *Termination of Employment.* The Committee, in its sole discretion, may (i) permit a Participant who ceases to be an Eligible Person before the end of any Performance Period, or the personal representative of a deceased Participant, to continue to be subject to a Performance Award relative to the current Performance Period until such Awards are forfeited or earned pursuant to their terms and conditions or (ii) authorize the payment to such Participant, or the personal representative of a deceased Participant, of the Performance Shares which would have been paid to the Participant had the Participant remained an Eligible Person to the end of the Performance Period. In the absence of such permission by the Committee, any unvested Performance Shares shall be forfeited when a Participant ceases to be an Eligible Person.

8. OTHER STOCK AWARDS

Section 8.1 *Grant of Other Stock Awards*. The Committee may, from time to time, subject to the provisions of the Plan and such other terms and conditions as it may determine, specify the terms and provisions of other forms of equity-based or equity-related awards not described above which the Committee determines to be consistent with the purpose of the Plan and the interests of the Company, which awards may provide for cash payments based in whole or in part on the value or future value of Common Stock, for the acquisition or future acquisition of Common Stock, or any combination thereof. Each Other Stock Award shall be evidenced by an Award Agreement and shall contain such terms and conditions and be in such form as the Committee may from time to time approve.

Section 8.2 *Minimum Vesting Condition*. Other Stock Awards subject to performance criteria shall not vest in less than one year and Other Stock Awards which are subject to time vesting shall not be fully vest in less than one year from the Date of Grant (subject to the provisions of Article 9).

9. TREATMENT OF AWARDS UPON CERTAIN EVENTS

Section 9.1 *Changes in Capital Structure and Similar Events*. In the event of any dividend or other distribution (whether in the form of cash, shares of Common Stock, other securities or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, split-off, combination, repurchase or exchange of shares of Common Stock or other securities of the Company, issuance of warrants or other rights to acquire shares of Common Stock or other securities of the Company, or other similar corporate transaction or event that affects the shares of Common Stock, in each case, that would (a) be considered an "equity restructuring" (within the meaning of FASB ASC Topic 718, as amended) and (b) result in an additional compensation expense to the Company pursuant to the provisions of FASB ASC Topic 718, as amended, if adjustments to Awards with respect to such event were discretionary or otherwise not required (each such event, an "*Adjustment Event*"), then there shall be substituted for or added to each share available under and subject to the Plan as provided herein, the number and kind of shares of stock or other securities into which each outstanding share of Common Stock shall be so changed or for which each such share shall be exchanged or to which each such share shall be entitled, as the case may be, to reflect any increase or decrease in the number of, or change in the kind or value of, issued shares of Common Stock to preclude, to the extent practicable, the enlargement or dilution of rights under such Awards. In the event there shall be any other change in the number or kind of the outstanding shares of Common Stock, or any stock or other securities into which the Common Stock shall have been changed or for which it shall have been exchanged, in each case, that does not constitute an Adjustment Event, then if the Committee shall, in its sole discretion, determine that such change equitably requires an adjustment in the shares available under and subject to the Plan, or in any Award theretofore granted or which may be granted under the Plan, such adjustments shall be made in accordance with such determination. No fractional shares of Common Stock or units of other securities shall be issued pursuant to any such adjustment, and any fractions resulting from any such adjustment shall be eliminated in each case by rounding downward to the nearest whole share.

Section 9.2 *Change of Control*. In the event of a Change of Control, and except as otherwise provided by the Committee in an Award Agreement, outstanding Awards shall be treated in accordance with one or more of the following methods determined by the Committee in its sole discretion without the consent or approval of any holder, which may vary among individual holders and which may vary among Awards held by any individual holder:

(a) adjusting any or all of (A) the number of shares of Common Stock or other securities of the Company (or number and kind of other securities or other property) that may be delivered in respect of Awards or with respect to which Awards may be granted under the Plan and (B) the terms of any outstanding Award, including, without limitation, (1) the number of shares of Common Stock or other securities of the Company (or number and kind of other securities or other property) subject to outstanding Awards or to which outstanding Awards relate, (2) the exercise price with respect to any Award or (3) any applicable performance measures;

(b) providing for a substitution or assumption of Awards, accelerating the exercisability of, vesting, or lapse of restrictions on, Awards or providing for a period of time for exercise prior to the occurrence of such event; or

(c) cancelling any one or more outstanding Awards and causing to be paid to the holders thereof, in cash, shares of Common Stock, other securities or other property,

or any combination thereof, the value of such Awards, if any, as determined by the Committee (which if applicable may be based upon the price per share of Common Stock received or to be received by other stockholders of the Company in such event), including without limitation, in the case of an outstanding Option or SAR, a cash payment in an amount equal to the excess, if any, of the Fair Market Value (as of a date specified by the Committee) of the shares of Common Stock subject to such Option or SAR over the aggregate exercise price of such Option or SAR, respectively (it being understood that, in such event, any Option or SAR having a per share exercise price equal to, or in excess of, the Fair Market Value of a share of Common Stock subject thereto may be canceled and terminated without any payment or consideration therefor); provided, however, that, with respect to each of subsections (a), (b) and (c), in the case of any "equity restructuring" (within the meaning of FASB ASC Topic 718, as amended), the Committee shall make an equitable or proportionate adjustment to outstanding Awards to reflect such equity restructuring. Any such adjustments shall be made in accordance with Section 409A of the Code, to the extent applicable. Any adjustment in Incentive Stock Options under this Section 9.1 (other than any cancellation of Incentive Stock Options) shall be made only to the extent not constituting a "modification" within the meaning of Section 424(h)(3) of the Code, and any adjustments under this Section 9.1 shall be made in a manner that does not adversely affect the exemption provided pursuant to Rule 16b-3 under the Exchange Act, to the extent applicable. The Company shall give each Participant notice of an adjustment hereunder and, upon notice, such adjustment shall be conclusive and binding for all purposes.

Section 9.3 *Disability, Death, Retirement or Involuntary Termination.* With respect to (i) a Participant who ceases to be an Eligible Person due to a Disability, (ii) the personal representative of a deceased Participant, or (iii) any other Participant who ceases to be an Eligible Person due to the Participant's retirement or involuntary termination (as defined by the Committee), the Committee, in its sole discretion and subject to applicable law (including Section 409A of the Code), may permit the purchase of all or any part of the shares subject to any unvested Option or waive the vesting requirements or permit the continued vesting of any Award on the date the Participant ceases to be an Eligible Person due to Disability or death, or retirement or involuntary termination. With respect to Options which have already vested at such date or the vesting of which is accelerated by the Committee in accordance with the foregoing provision, the Participant or the personal representative of a deceased Participant shall have the right to exercise such vested Options within such period(s) as the Committee shall determine.

10. GENERAL

Section 10.1 *Amendment or Termination of Plan.* The Board may suspend or terminate the Plan at any time. In addition, the Board may, from time to time, amend the Plan in any manner, but may not adopt any amendment without Shareholder Approval if (i) Shareholder Approval is necessary or desirable to qualify or comply with any tax or regulatory requirement for which or with which the Board deems it necessary or desirable to qualify or comply, or (ii) in the opinion of counsel to the Company, Shareholder Approval is required by any federal or state laws or regulations or the rules of any stock exchange on which the common stock may be listed.

Section 10.2 *Withholding Taxes*. Unless prohibited by the terms of an Award Agreement, the Company may, in its sole discretion, satisfy any federal, state or local tax withholding obligation relating to an Award by any of the following means or by a combination of such means: (i) causing the Participant to tender a cash payment; (ii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to the Participant in connection with the Award; (iii) withholding cash from an Award settled in cash; (iv) withholding

payment from any amounts otherwise payable to the Participant; or (v) by such other method as may be set forth in the Award Agreement.

Section 10.3 *Code Section 83(b) Elections.* The Company, its Subsidiaries and Affiliated Entities have no responsibility for a Participant's election, attempt to elect or failure to elect to include the value of an Award subject to Section 83 in the Participant's gross income for the year of grant pursuant to Section 83(b) of the Code. Any Participant who makes an election pursuant to Section 83(b) will promptly provide the Committee with a copy of the election form.

Section 10.4 *Code Section 409A.* The Plan and all Awards shall be administered, interpreted, and construed in a manner consistent with Code Section 409A or an exemption therefrom. Should any provision of the Plan, any Award hereunder, or any other agreement or arrangement contemplated by the Plan be found not to comply with, or otherwise be exempt from, the provisions of the Code Section 409A, such provision shall be modified and given effect (retroactively if necessary), in the sole discretion of the Committee, and without the consent of the Participant, in such manner as the Committee determines to be necessary or appropriate to comply with, or to effectuate an exemption from, Code Section 409A. Without limiting the foregoing and notwithstanding anything contained herein to the contrary, to the extent required in order to avoid accelerated taxation or tax penalties under Code Section 409A, amounts that would otherwise be payable and benefits that would otherwise be provided pursuant to this Plan during the six-month period immediately following the Participant's separation from service shall instead be paid on the first business day after the date that is six months following the Participant's termination date (or death, if earlier), with interest from the date such amounts would otherwise have been paid at the short-term applicable federal rate, compounded semi-annually, as determined under Section 1274 of the Code, for the month in which payment would have been made but for the delay in payment required to avoid the imposition of an additional rate of tax on the Participant under Code Section 409A. In the event an Award is subject to Code Section 409A, any payments to be made under this Plan upon a termination of employment or service shall only be made if such termination of employment or service constitutes a "separation from service" under Code Section 409A. In no event may the Participant, directly or indirectly, designate the calendar year of any payment to be made under the Plan or any Award Agreement or otherwise. Each payment in a series of payments hereunder shall be deemed to be a separate payment for purposes of Code Section 409A. Notwithstanding the foregoing, the Company makes no representations that the payments and benefits provided under this Plan comply with Code Section 409A and in no event shall the Company be liable for all or any portion of any taxes, penalties, interest or other expenses that may be incurred by the Employee on account of non-compliance with Code Section 409A.

Section 10.5 *Non-Transferability.* Subject to other provisions of the Plan and any applicable Award Agreement, Awards are not transferable other than by will or the laws of descent and distribution. Any attempted sale, transfer, assignment, pledge, hypothecation or other disposition of, or the levy of execution, attachment or similar process upon, any Award contrary to the provisions hereof shall be void and ineffective, shall give no right to any purported transferee, any may, at the sole discretion of the Committee, result in forfeiture of the Award involved in such attempt. The Committee shall impose such other restrictions and conditions on any shares of Common Stock covered by an Award as it may deem advisable including, without limitation, restrictions under applicable Federal or state securities laws, and may legend the certificates representing the shares of Common Stock subject to the Award to give appropriate notice of such restrictions.

Section 10.6 *Committee Discretion.* The Committee's determinations under the Plan, including without limitation, (i) the determination of the Eligible Persons to receive Awards, (ii) the form, amount and timing of such Awards, (iii) the terms and provisions of such Awards, (iv) minimum employment or service periods, and (v) agreements evidencing the same, need not be uniform and, subject to any restrictions set forth in the Plan, may be made by the Committee selectively among Participants who receive, or who are eligible to receive, Awards under the Plan, whether or not such Participants are similarly situated.

Section 10.7 *Leaves of Absence, Suspensions.* The Committee shall be entitled to make such rules, regulations and determinations as it deems appropriate under the Plan in respect of any suspension of employment or leave of absence from the Company granted to a Participant whether such suspension or leave is paid or unpaid and whether due to a Disability or otherwise. Without limiting the generality of the foregoing, the Committee shall be entitled to determine (i) whether or not any such suspension or leave of absence shall be treated as if the Participant ceased to be an employee of the Company and (ii) the impact, if any, of any such suspension or leave of absence on Awards under the Plan.

Section 10.8 *Participant Misconduct.* Notwithstanding anything in the Plan to the contrary, the Committee shall have the authority under the Plan to determine that in the event of serious misconduct by the Participant (including violations of employment agreements, confidentiality or other proprietary matters) or any activity of a Participant in competition with the business of the Company or any Subsidiary or Affiliated Entity, any outstanding Award granted to such Participant may be cancelled, in whole or in part, whether or not vested. The determination of whether a Participant has engaged in a serious breach of conduct or any activity in competition with the business of the Company or any Subsidiary or Affiliated Entity shall be determined by the Committee in good faith and in its sole discretion.

Section 10.9 *Regulatory Approval and Listings*. The Company shall use its best efforts to file with the Securities and Exchange Commission as soon as practicable following the date this Plan is effective, and keep continuously effective and usable, a Registration Statement on Form S-8 with respect to shares of Common Stock subject to Awards hereunder. Notwithstanding anything contained in this Plan to the contrary, the Company shall have no obligation to issue or deliver certificates representing shares of Common Stock evidencing Awards prior to:

(a) the obtaining of any approval from, or satisfaction of any waiting period or other condition imposed by, any governmental agency which the Committee shall, in its sole discretion, determine to be necessary or advisable;

(b) the listing of such shares on any exchange on which the Common Stock may be listed; and

(c) the completion of any registration or other qualification of such shares under any state or federal law or regulation of any governmental body which the Committee shall, in its sole discretion, determine to be necessary or advisable.

Section 10.10 *Right to Continued Employment or Board Membership.* Participation in the Plan shall not give any Participant any right to remain in the employ of the Company, a Subsidiary or an Affiliated Entity or any right to remain on the Board of the Company. Further, the adoption of this Plan shall not be deemed to give any Employee or Non-Employee Director or any other individual any right to be granted an Award.

Section 10.11 *Other Compensation Programs.* The existence and terms of the Plan shall not limit the authority of the Board in compensating Employees and Non-Employee Directors in such other forms and amounts, including compensation pursuant to any other plans as may be currently in effect or adopted in the future, as it may determine from time to time.

Section 10.12 *Reliance on Reports.* Each member of the Committee and each member of the Board shall be fully justified in relying or acting in good faith upon any report made by the independent public accountants of the Company and its Subsidiaries and upon any other information furnished in connection with the Plan by any person or persons other than the Committee or Board member. In no event shall any person who is or shall have been a member of the Committee or the Board be liable for any determination made or other action taken or any omission to act in reliance upon any such report or information, including the furnishing of information, or failure to act, if in good faith.

Section 10.13 *Construction*. The titles and headings of the sections in the Plan are for the convenience of reference only, and in the event of any conflict, the text of the Plan, rather than such titles or headings, shall control.

Section 10.14 *Governing Law, Severability*. The Plan shall be governed by and construed in accordance with the laws of the State of Oklahoma except as superseded by applicable federal law. If any provision of the Plan is held unlawful or otherwise invalid or unenforceable in whole or in part, the unlawfulness, invalidity or unenforceability will not affect any other parts of the Plan, which will remain in full force and effect.

Exhibit 99.2

NEWS RELEASE

FOR IMMEDIATE RELEASE
February 9, 2021

CHESAPEAKE ENERGY CORPORATION SUCCESSFULLY EMERGES FROM FINANCIAL RESTRUCTURING

OKLAHOMA CITY, February 9, 2021 – Chesapeake Energy Corporation (NASDAQ: CHK) announced today that it has successfully concluded its restructuring process and emerged from Chapter 11, satisfying all conditions precedent under its Plan of Reorganization (the "Plan"). Highlights of the reorganized Chesapeake include:

- **Anticipated cumulative free cash flow of more than $2 billion over the next five years, providing stability and optionality to return cash to shareholders**
- **Targeting long-term net debt to EBITDAX ratio of less than 1.0 times**
- **Issued $1 billion senior unsecured notes at a weighted average coupon of less than 5.7%**
- **Disciplined capital reinvestment strategy of 60% to 70% of cash flow; 2021 activity focused on world-class natural gas assets**
- **The permanent elimination of over $1 billion in annual cash costs from 2019 levels with opportunities for additional reductions; top-quartile operating performance metrics vs. peer group**
- **Commitment to achieving net-zero GHG direct emissions by 2035, eliminating routine flaring on all wells completed on a go-forward basis, and meaningfully reducing methane and GHG intensity by 2025**
- **New Board of Directors nominated by long-term value-focused equity holders; newly formed ESG Committee dedicated to ESG oversight and excellence**

Doug Lawler, Chesapeake's President and Chief Executive Officer, commented, "Today marks a new day for Chesapeake. We have fundamentally reset our business, and with an improved capital and cost structure, disciplined approach to capital reinvestment, diverse asset base and talented employees, we are poised to deliver sustainable free cash flow for years to come. Additionally, our unwavering resolve to leading a responsible energy future has never been greater, and our pledge to achieve net zero GHG direct emissions by 2035, eliminate routine flaring on new completions immediately, and significantly reduce our methane and GHG emission intensity by 2025, place Chesapeake on a path toward setting a new standard of environmental excellence in our industry."

Michael Wichterich, Chairman of Chesapeake's Board of Directors, commented "The new Board of Directors and I look forward to working with Doug and the entire Chesapeake team to build an enduring enterprise which creates sustainable value for our stakeholders by efficiently producing low-cost energy under the strictest environmental, social, and governance standards."

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Lawler added, “As we look ahead, maintaining the strength of our balance sheet, our cost leadership position, and our steadfast commitment to delivering consistent returns, while lowering our emissions profile will be paramount to our success.”

New Common Equity

Under the court-approved Plan, approximately $7.8 billion of debt has been equitized, and the company’s preferred and common equity interests have been cancelled as of February 9, 2021.

The company’s new common shares will be listed on the NASDAQ Exchange under the ticker symbol “CHK,” and are expected to commence trading on February 10, 2021. At emergence, Chesapeake will have approximately 100 million new common shares issued and outstanding, with additional shares to be issued upon exercise three tranches of warrants, each with exercise provisions. The new warrants will also be listed on the NASDAQ Exchange under the ticker symbols "CHKEW" for the Series A warrants, "CHKEZ" for the Series B warrants and "CHKEL" for the Series C warrants.

Debt and Liquidity Update

As of February 9, 2021, Chesapeake’s principal amount of debt outstanding was approximately $1,271 million, compared to $9,095 million as of June 30, 2020.

Debt	Balance at June 30, 2020 ($mm)	Balance at February 9, 2021 ($mm)
Senior Secured Debt	$3,429	$271
Total Secured Debt	**$5,759**	**$271**
Total Unsecured Debt	**$3,336**	**$1,000**
Total Funded Debt	**$9,095**	**$1,271**

Preferred Equity	Balance at June 30, 2020 ($mm)	Balance at February 8, 2021 ($mm)
5.75% Cumulative Non-Voting Convertible Preferred Stock (Series A)	$423	--
5.75% Cumulative Non-Voting Convertible Preferred Stock	$771	--
4.50% Cumulative Convertible Preferred Stock	$256	--
5.00% Cumulative Convertible Preferred Stock (Series 2005B)	$181	--

Upon emergence, the company entered into a credit facility with a $2.5 billion borrowing base, consisting of a $221 million non-revolving loan facility (maturing 2025) and a $1,750 million revolving loan facility (maturing 2024). Chesapeake had approximately $50 million borrowed on the facility at February 9, 2021, as well as $51 million reserved for undrawn letters of credit outstanding. On February 5, 2021, Chesapeake issued $1 billion of new senior unsecured notes which replaced the committed exit first lien last out term loan the company had negotiated for in connection with filing for Chapter 11.

Operations Update

Chesapeake's average daily production for the 2020 fourth quarter was approximately 435,000 barrels of oil equivalent (boe), and it projects its full year 2021 average daily production to be approximately 427,000 boe. The company's planned capital expenditures for 2021 includes operating an average of six rigs and two stimulation crews with an estimated spend of approximately $700 million. Additional information about our strategy and 2021 outlook may be found on the company's website at http://investors.chk.com/presentations.

New Board of Directors

In accordance with the Plan, a new Board of Directors was appointed and includes Chairman Michael Wichterich, Timothy S. Duncan, Benjamin C. Duster, IV, Sarah Emerson, Matthew M. Gallagher, Brian Steck and Doug Lawler. The Board is establishing the company's first Environmental and Social Governance Committee dedicated to ESG oversight and excellence. Biographies for the new board members can be found on the company's website at http://www.chk.com/about/board-of-directors.

Additional Information

Details of the restructuring, the securities issued pursuant to the Plan, and the debt and other agreements entered into as part of the Plan will be provided in a Form 8-K, which can be viewed on the company's website or the Securities and Exchange Commission's website at www.sec.gov. Court filings and other information related to the restructuring will continue to be available on the company's website at www.chk.com/investors, and the full court docket for the company's restructuring proceedings can be found at https://dm.epiq11.com/case/chesapeake/dockets.

Headquartered in Oklahoma City, Chesapeake Energy Corporation's (NASDAQ: CHK) operations are focused on discovering and responsibly developing its large and geographically diverse resource base of unconventional oil and natural gas assets onshore in the United States.

This news release and the accompanying outlook include "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Forward-looking statements are statements other than statements of historical fact. They include statements that give our current expectations, management's outlook guidance or forecasts of future events, cost-cutting measures, reductions in expenditures, asset divestitures, reductions in capital expenditures, operational efficiencies, production and well connection forecasts, estimates of operating costs, anticipated capital and operational efficiencies, planned development drilling and expected drilling cost reductions, expected lateral lengths of wells, anticipated timing and number of wells to be placed into production, expected oil growth trajectory, anticipated timing of execution of new gathering agreement, expected savings in connection with new oil gathering and pipeline agreements, projected capital expenditures, projected cash flow and liquidity, our ability to enhance our cash flow and financial flexibility, plans and objectives for future operations, the ability of our employees, portfolio strength and operational leadership to create long-term value, and the assumptions on which such statements are based. Although we believe the expectations and forecasts reflected in the forward-looking statements are reasonable, we can give no assurance they will prove to have been correct. They can be affected by inaccurate or changed assumptions or by known or unknown risks and uncertainties.

Factors that could cause actual results to differ materially from expected results include those described under "Risk Factors" in Item 1A of our annual report on Form 10-K and any updates to those factors set forth in Chesapeake's subsequent quarterly reports on Form 10-Q or current reports on Form 8-K (available at http://www.chk.com/investors/sec-filings). These risk factors include the impact of the COVID-19 pandemic and its effect on the company's business, financial condition, employees, contractors and vendors, and on the global demand for oil and natural gas and U.S. and world financial markets, the volatility of oil, natural gas and NGL prices; the limitations our level of indebtedness may have on our financial flexibility; our inability to access the capital markets on favorable terms; the availability of cash flows from operations and other funds to finance reserve replacement costs or satisfy our debt obligations; write-downs of our oil and natural gas asset carrying values due to low commodity prices; our ability to replace reserves and sustain production; uncertainties inherent in estimating quantities of oil, natural gas and NGL reserves and projecting future rates of production and the amount and timing of development expenditures; our ability to generate profits or achieve targeted results in drilling and well operations; leasehold terms expiring before production can be established; commodity derivative activities resulting in lower prices realized on oil, natural gas and NGL sales; the need to secure derivative liabilities and the inability of counterparties to satisfy their obligations; adverse developments or losses from pending or future litigation and regulatory proceedings, including royalty claims; charges incurred in response to market conditions; drilling and operating risks and resulting liabilities; effects of environmental protection laws and regulation on our business; legislative and regulatory initiatives further regulating hydraulic fracturing; our need to secure adequate supplies of water for our drilling operations and to dispose of or recycle the water used; impacts of potential legislative and regulatory actions addressing climate change; federal and state tax proposals affecting our industry; potential OTC derivatives regulation limiting our ability to hedge against commodity price fluctuations; competition in the oil and gas exploration and production industry; a deterioration in general economic, business or industry conditions; negative public perceptions of our industry; limited control over properties we do not operate; pipeline and gathering system capacity constraints and transportation interruptions; terrorist activities and cyber-attacks adversely impacting our operations; and an interruption in operations at our headquarters due to a catastrophic event .

In addition, disclosures concerning the estimated contribution of derivative contracts to our future results of operations are based upon market information as of a specific date. These market prices are subject to significant volatility. Our production forecasts are also dependent upon many assumptions, including estimates of production decline rates from existing wells and the outcome of future drilling activity. Expected asset sales may not be completed in the time frame anticipated or at all. We caution you not to place undue reliance on our forward-looking statements, which speak only as of the date of this news release, and we undertake no obligation to update any of the information provided in this release, except as required by applicable law. In addition, this news release contains time-sensitive information that reflects management's best judgment only as of the date of this news release.