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): November 20, 2026

HighPeak Energy, Inc.
(Exact name of registrant as specified in its charter)

Delaware	**001-39464**	**84-3533602**
(State or other jurisdiction of incorporation)	**(Commission File Number)**	**(IRS Employer Identification No.)**

421 W. 3rd St., Suite 1000
Fort Worth, Texas 76102
(Address of principal executive offices) (zip code)

(817) 850-9200
(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:

☐ 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:

Title of Each Class	**Trading Symbol(s)**	**Name of Each Exchange on Which Registered**
Common Stock	HPK	The Nasdaq Stock Market LLC

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. ☐

Introductory Note.

HighPeak Energy, Inc. (the "Company") previously announced that on October 6, 2026, the Company entered into (x) a Securities Purchase Agreement (the "DEI Purchase Agreement"), with PT Danantara Energy International ("DEI"), a subsidiary of PT Danantara Investment Management pursuant to which DEI has agreed to purchase from the Company 250,000 shares of a newly created series of convertible preferred stock, designated as Series A Convertible Preferred Stock (the "Series A Preferred Stock") for an aggregate purchase price of $250.0 million and (y) a Securities Purchase Agreement (the "THP Purchase Agreement") with PT Tunas Harapan Perkasa ("THP," and together with DEI, the "Investors"), a subsidiary of PT Energi Mega Persada Tbk ("EMP"), pursuant to which THP agreed to purchase from the Company 200,000 shares of Series A Preferred Stock (such transactions, the "Investment") for an aggregate purchase price of $200.0 million. This Current Report on Form 8-K (the "Current Report") relates to the closing of the Investment on November 20, 2026, the issuance of the shares of Series A Preferred Stock in connection therewith and related transactions.

Item 1.01. Entry into a Material Definitive Agreement.

Registration Rights Agreement

In connection with the closing of the Investment, the Company entered into a registration rights agreement, dated November 20, 2026, with the Investors providing for, among other things, certain demand and piggyback registration rights related to the resale of the shares of the Company's common stock, par value $0.0001 per share (the "Common Stock") issuable upon conversion of the Series A Preferred Stock (the "Registration Rights Agreement").

The foregoing description of the Registration Rights Agreement is subject to and qualified in its entirety by reference to the Registration Rights Agreement, which is attached as Exhibit 10.1 to this Current Report and is incorporated by reference into this Item 1.01.

New Credit Facility

The information contained in Item 2.03 of this Current Report is incorporated into this Item 1.01 by reference.

Item 1.02. Termination of a Material Definitive Agreement.

On November 20, 2026, in connection with the closing of the Investment and the Company's entry into the New Credit Agreement (as defined in Item 2.03 of this Current Report on Form 8-K), the Company repaid in full all outstanding obligations under, and terminated, (i) the Term Loan Credit Agreement, dated as of September 12, 2023 (as amended, the "Term Loan Credit Agreement"), by and among the Company, as borrower, Texas Capital Bank, as administrative agent, Chambers Energy Management, LP, as collateral agent, and the lenders from time to time party thereto, and (ii) the Credit Agreement, dated as of November 1, 2023 (as amended, the "Senior Credit Facility Agreement" and, together with the Term Loan Credit Agreement, the "Existing Credit Agreements"), by and among the Company, as borrower, Fifth Third Bank, National Association ("Fifth Third"), as administrative agent and collateral agent, and the lenders party thereto. The outstanding obligations under the Existing Credit Agreements were repaid using the proceeds from the Investment, initial borrowings under the New Credit Agreement and cash on hand. As of the date of termination, there were no borrowings outstanding under the Senior Credit Facility Agreement, and letters of credit issued thereunder in an aggregate face amount of $7.9 million were deemed issued under the New Credit Agreement.

The Company was permitted to repay amounts outstanding under the Existing Credit Agreements prior to maturity without premium or penalty, and the Company did not incur any early termination penalties in connection with the termination of the Existing Credit Agreements.

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

On November 20, 2026, in connection with the closing of the Investment, the Company, as borrower, entered into a Credit Agreement (the "New Credit Agreement"), by and among the Company, Citibank, N.A. ("Citibank"), as administrative agent and collateral agent, and the lenders and other parties from time to time party thereto. The New Credit Agreement provides for new senior secured reserve-based credit facilities in an aggregate maximum amount of up to $1.5 billion, consisting of (i) a revolving credit facility (the "Revolving Credit Facility") with an initial elected commitment amount of $750.0 million and (ii) a $50.0 million term loan facility (the "Term Loan Facility" and, together with the Revolving Credit Facility, the "New Credit Facilities"), subject to an initial borrowing base of $800.0 million.

The Revolving Credit Facility will mature on November 20, 2030, the fourth anniversary of the closing of the New Credit Agreement, and the Term Loan Facility will mature on November 20, 2027, the first anniversary of the closing of the New Credit Agreement.

On November 20, 2026, the Company borrowed $550.0 million under the Revolving Credit Facility and $50.0 million under the Term Loan Facility. The proceeds of such borrowings, together with the proceeds from the Investment and cash on hand, were used to repay in full the outstanding obligations under the Existing Credit Agreements and to pay fees and expenses related to the foregoing transactions. Future borrowings under the Revolving Credit Facility may be used for working capital for exploration and production operations, acquisitions and general corporate purposes.

Availability under the New Credit Facilities is subject to the borrowing base, elected commitments, outstanding borrowings, letters of credit, financial covenants and other conditions. The borrowing base will be redetermined initially on or about February 1, 2027 and June 1, 2027, and thereafter semi-annually on or about April 1 and October 1 of each year, commencing October 1, 2027, based on the lenders' evaluation of the Company's crude oil and natural gas reserves. The borrowing base is also subject to reduction upon certain asset sales, hedge terminations and incurrences of permitted additional indebtedness.

Loans under the New Credit Facilities bear interest, at the Company's option, at either (i) Term SOFR (as defined in the New Credit Agreement) plus an applicable margin ranging from 2.75% to 3.75% or (ii) the Alternate Base Rate (as defined in the New Credit Agreement) plus an applicable margin ranging from 1.75% to 2.75%, in each case based on the utilization of the revolving borrowing base. The Company may repay amounts borrowed under the New Credit Facilities prior to maturity without premium or penalty, subject to customary breakage costs.

The obligations under the New Credit Agreement are guaranteed by certain of the Company's subsidiaries and are secured by a first-priority security interest in substantially all of the assets of the Company and such subsidiaries, including mortgages on at least 85% of the total value of the Company's proved crude oil and natural gas properties.

The New Credit Agreement contains customary affirmative and negative covenants that limit the ability of the Company and its restricted subsidiaries to, among other things, incur additional indebtedness, incur additional liens, make investments and loans, enter into mergers and acquisitions, make certain cash dividends and certain other restricted payments, enter into certain hedging transactions, sell assets and engage in transactions with affiliates. The New Credit Agreement also requires the Company to maintain (i) a total net leverage ratio of not greater than 3.00 to 1.00 and (ii) a current ratio of not less than 1.00 to 1.00, in each case tested as of the last day of each fiscal quarter, commencing with the fiscal quarter ending December 31, 2026.

The foregoing description of the New Credit Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the New Credit Agreement, a copy of which is filed as Exhibit 10.2 hereto.

Item 3.02. Unregistered Sales of Equity Securities.

The information contained in the Introductory Note and Item 5.03 of this Current Report relating to the Investment is incorporated into this Item 3.02 of this Current Report by reference.

The Company offered and sold the shares of Series A Preferred Stock to the Investors in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"). The Company relied on this exemption based in part on representations made by each Investor in the applicable Securities Purchase Agreement, including that such Investor is an "accredited investor" (as defined in Rule 501(a) of Regulation D under the Securities Act), and the offer and sale of the Series A Preferred Stock did not involve any general solicitation or general advertising.

The shares of Common Stock that may be issued upon conversion of the Series A Preferred Stock will be offered and sold in a transaction exempt from registration under the Securities Act in reliance on Section 4(a)(2) or Section 3(a)(9) thereof and/or Regulation D promulgated thereunder. The shares of Common Stock issuable upon conversion of the shares of Series A Preferred Stock, if any, have not been registered under the Securities Act and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements.

Item 3.03. Material Modification to Rights of Security Holders.

The information set forth in Item 5.03 of this Current Report is incorporated into this Item 3.03 of this Current Report by reference.

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

Director Appointments

In connection with the closing of the Investment and pursuant to the terms of each of the DEI Purchase Agreement and the THP Purchase Agreements (in each case, as amended by the Amendments (as defined below)), effective as of November 20, 2026, the Board of Directors of the Company (the "Company Board") appointed each of Manish Chiddarwar and Tri Firmanto to serve as Class A directors of the Company Board until his successor is duly elected and qualified, or if earlier, until his death, disability, resignation, disqualification or removal. These appointments will expand the Company Board to nine directors.

Manish Chiddarwar

Manish Chiddarwar, age 45, has served as a Senior Director, Corporate Finance & Reporting at PT Danantara Investment Management since July 2025. PT Danantara Investment Management is the investment arm of BPI Danantara, the sovereign wealth fund of Indonesia. Mr. Chiddarwar has over 20 years of experience as an investor and investment banker across digital infrastructure, real estate, energy, natural resources, and media. Prior to his current role, Mr. Chiddarwar led mergers and acquisitions at BDx Data Centers, a pan-Asian digital infrastructure player, from 2023 to 2025, and held multiple roles at Lynx Asia Partners, a boutique advisory and investment firm, from 2013 to 2023. Earlier in his career, Mr. Chiddarwar worked at Standard Bank, focusing on structured financing in Southeast Asia, and held investment banking roles at Bank of America Merrill Lynch. Mr. Chiddarwar holds an MBA from the Indian Institute of Management Bangalore, earned in 2006, and a Bachelor of Engineering in Computer Engineering from the University of Mumbai.

Committee assignments for Mr. Chiddarwar have not yet been determined. Mr. Chiddarwar is not related to any officer or director of the Company. Mr. Chiddarwar's appointment as a director is pursuant to the nomination rights set forth in the DEI Purchase Agreement (as amended). There are no transactions between Mr. Chiddarwar and the Company that would require disclosure under Item 404(a) of Regulation S-K. The Company Board has affirmatively determined that Mr. Chiddarwar satisfies the Nasdaq independence requirements and the Company's Corporate Governance Guidelines.

Mr. Chiddarwar will not be receiving compensation from the Company for his service on the Company Board.

Tri Firmanto

Tri Firmanto, age 46, has served as a Director of EMP, an Indonesian oil and gas exploration and production company listed on the Indonesia Stock Exchange, since December 2023. In this role, he serves as Director and Chief Operation, Asset B, managing and coordinating the operations of EMP's domestic assets, including the producing Bentu, Korinci, Sengkang and Kangean blocks. Previously, Mr. Firmanto served as General Manager at EMP Bentu Limited and EMP Korinci Baru Limited from 2020 to 2025. Mr. Firmanto holds a Bachelor of Engineering in Chemical Engineering from the University of Indonesia, earned in 2002, and a Master of Engineering in Petroleum Engineering from Trisakti University, earned in 2018.

Committee assignments for Mr. Firmanto have not yet been determined. Mr. Firmanto is not related to any officer or director of the Company. Mr. Firmanto's appointment as a director is pursuant to the nomination rights set forth in the THP Purchase Agreement (as amended). There are no transactions between Mr. Firmanto and the Company that would require disclosure under Item 404(a) of Regulation S-K. The Company Board has affirmatively determined that Mr. Firmanto satisfies the Nasdaq independence requirements and the Company's Corporate Governance Guidelines.

Mr. Firmanto will not be receiving compensation from the Company for his service on the Company Board.

Indemnification Agreements

In connection with the appointments of Messrs. Chiddarwar and Firmanto to the Company Board, the Company will enter into customary indemnification agreements with Mr. Chiddarwar and Mr. Firmanto (the "Indemnification Agreements"), substantially in the form previously approved by the Company Board and filed as Exhibit 10.5 to the Company's Form 10-K, filed with the SEC on March 11, 2026. The foregoing description of the Indemnification Agreements does not purport to be complete and is qualified in its entirety by reference to the full text of the form of Indemnification Agreement, a copy of which is filed as Exhibit 10.5 hereto and incorporated by reference into this Item 5.02.

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

Series A Preferred Stock

On November 20, 2026, the Company filed a Certificate of Designation (the "Series A Preferred Stock Certificate of Designation") with the Secretary of State of Delaware to establish the preferences, limitations and relative rights of the Series A Preferred Stock, which became effective upon filing.

The Series A Preferred Stock does not have a maturity date. Cumulative dividends on the Series A Preferred Stock will be payable quarterly in arrears, on March 31, June 30, September 30 and December 31 of each year, to commence on December 31, 2026, when, as and if declared by the Company Board. Dividends will be paid at a rate (i) from the closing to, but excluding, the second anniversary of the closing, 6.0% per annum if paid in cash or 7.5% per annum if paid in kind, (ii) from the second anniversary to, but excluding, the fifth anniversary of the closing, 7.5% per annum if paid in cash or 9.0% per annum if paid in kind, and (iii) from and after the fifth anniversary of the closing, 10.0% per annum.

Each share of Series A Preferred Stock has a liquidation preference of $1,000 per share, plus accumulated but unpaid dividends, and is convertible, at the holder's option at any time into shares of Common Stock, at the rate per share determined by dividing (i) the sum of (x) the Stated Value per share and (y) the accrued and unpaid dividends since the immediately preceding preferred dividend by (ii) the conversion price in effect as of the date thereof (initially $9.50 per share, but subject to customary adjustments (the "Conversion Price")). Cash will be paid in lieu of fractional shares.

The Series A Preferred Stock may be redeemed by the Company on or after the third anniversary of the closing upon 20 business days' notice at a cash redemption price equal to an amount that when taken together with any cash dividends would result in a 10.0% IRR (as calculated using the Microsoft Excel XIRR function). The Series A Preferred Stock will be mandatorily convertible at the option of the Company after the third anniversary of the closing if the closing price of the Common Stock exceeds 150% of the Conversion Price for thirty out of forty consecutive market trading days, subject to the satisfaction of certain liquidity conditions set forth in the Series A Preferred Stock Certificate of Designation.

The above description of the Series A Preferred Stock Certificate of Designation is a summary and is qualified by reference to the full text of the Series A Preferred Stock Certificate of Designation, which is attached hereto as Exhibit 3.1 and incorporated herein by reference. A specimen certificate representing the Series A Preferred Stock is attached hereto as Exhibit 4.1 and is incorporated herein by reference.

Item 7.01. Regulation FD Disclosure.

On November 23, 2026, the Company issued a press release announcing the closing of the Investment. A copy of the press release is furnished hereto as Exhibit 99.1 and incorporated into this Item 7.01 by reference.

The information in this Item 7.01 of Form 8-K, including the accompanying Exhibit 99.1, shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liability of such section, nor shall such information be deemed incorporated by reference in any filing under the Securities Act or the Exchange Act, regardless of the general incorporation language of such filing, except as shall be expressly set forth by specific reference in such filing.

Item 8.01. Other.

Purchase Agreement Amendments

On November 14, 2026, the Company entered into (x) an Amendment to the DEI Purchase Agreement and (y) an Amendment to the THP Purchase Agreement (collectively, the "Amendments"). Each of the Amendments provides, among other things, that:

- if the applicable Investor (together with its permitted transferees and its board rights transferee) holds at least 10% of the Company's outstanding voting securities but the limitations on the number of total Investor designees on the Company Board contained in the applicable Securities Purchase Agreement would result in a reduction in the number of directors of the Company Board such Investor would otherwise be entitled to nominate or designate, then, the Company Board shall increase the size of the Company Board by one (1) director and appoint an additional individual (who shall be an "Independent Director" under Nasdaq Rule 5605(a)(2)) to the Company Board; and

- for so long as the Investors (taken together with their respective permitted transferees and board rights transferees) have the right to designate two Series A Directors to the Company Board, the Company will not, without the prior consent of the applicable Investor, decrease the size of the Company Board to fewer than nine directors.

The foregoing descriptions of the Amendments are subject to and qualified in their entirety by reference to the Amendments, which are attached as Exhibit 10.6 and Exhibit 10.7 to this Current Report and are incorporated by reference into this Item 8.01. The DEI Purchase Agreement and the THP Purchase Agreement are included to this Current Report as Exhibits 10.3 and 10.4.

Item 9.01. Financial Statements and Exhibits

(d) Exhibits

Exhibit Number	Description
3.1	Certificate of Designation of Series A Convertible Preferred Stock of HighPeak Energy, Inc.
4.1	Form of Certificate of Preferred Stock
10.1	Registration Rights Agreement, dated as of November 20, 2026, by and among HighPeak Energy, Inc., PT Danantara Energy International and PT Tunas Harapan Perkasa.
10.2#	Credit Agreement, dated as of November 20, 2026, by and among HighPeak Energy, Inc., as borrower, Citibank, N.A., as administrative agent, and the lenders and other parties from time to time party thereto.
10.3#	Securities Purchase Agreement, dated as of October 6, 2026, by and between HighPeak Energy, Inc. and PT Danantara Energy International (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K (File No. 001-39464) filed with the SEC on October 6, 2026).
10.4#	Securities Purchase Agreement, dated as of October 6, 2026, by and between HighPeak Energy, Inc. and PT Tunas Harapan Perkasa (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K (File No. 001-39464) filed with the SEC on October 6, 2026).
10.5	Form of Indemnification Agreement (incorporated by reference to Exhibit 10.3 to the Company's Annual Report on Form 10-K (File No. 001-39464) filed with the SEC on March 11, 2026).
10.6	Amendment to the Securities Purchase Agreement, dated as of November 14, 2026, by and between HighPeak Energy, Inc. and PT Tunas Danantara Energy International.
10.7	Amendment to the Securities Purchase Agreement, dated as of November 14, 2026, by and between HighPeak Energy, Inc. and PT Tunas Harapan Perkasa.
99.1	Press Release, dated November 23, 2026.
104	Cover Page Interactive Data File - the cover page XBRL tags are embedded within the Inline XBRL document.
#	Certain schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company agrees to furnish a supplemental copy of any omitted attachment to the SEC upon request.

SIGNATURES

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.

HIGHPEAK ENERGY, INC.

By: /s/ Steven W. Tholen
Name: Steven W. Tholen
Title: Chief Financial Officer

Dated: November 23, 2026

CERTIFICATE OF DESIGNATION
OF
SERIES A CONVERTIBLE PREFERRED STOCK
OF
HIGHPEAK ENERGY, INC.

(Pursuant to Section 151 of the General Corporation Law of the State of Delaware)

HighPeak Energy, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (hereinafter, the "Corporation"), hereby certifies that the following resolution was duly adopted by the Board of Directors of the Corporation (or a duly authorized committee thereof) as required by Section 151 of the General Corporation Law of the State of Delaware:

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the authority expressly granted to and vested in the Board of Directors of the Corporation in accordance with the provisions of the certificate of incorporation of the Corporation, there is hereby created and provided out of the authorized but unissued preferred stock, par value $0.0001 per share, of the Corporation ("Preferred Stock"), a new series of Preferred Stock, and there is hereby stated and fixed the number of shares constituting such series and the designation of such series and the powers (including voting powers), if any, of such series and the preferences and relative, participating, optional, special or other rights, if any, and the qualifications, limitations or restrictions, if any, of such series as follows:

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Exhibits

Exhibit A: Form of Preferred Stock Certificate A-1
Exhibit B: Form of Restricted Stock Legend B-1

Section 1. Designation; Par Value; Number of Authorized Shares.

(a) Designation; Par Value. The shares of such series shall be designated as the "Series A Convertible Preferred Stock," par value $0.0001 per share, of the Corporation (the "Convertible Preferred Stock").

(b) Number of Authorized Shares. The total authorized number of shares of Convertible Preferred Stock is four hundred and fifty thousand (450,000); provided, however, that, by resolution of the Board of Directors, or any duly authorized committee thereof, the total number of authorized shares of Convertible Preferred Stock may be increased (but not above the total number of authorized shares of Preferred Stock) or decreased (but not below the number of shares thereof then outstanding) in accordance with the General Corporation Law of the State of Delaware. The Corporation shall have the authority to issue fractional shares of Convertible Preferred Stock.

Section 2. Definitions.

"Accrued Liquidation Preference" has the meaning set forth in Section 6(a)(iii).

"Activist Investor" means any Person who is known to have engaged in activist campaigns in the United States in the three years prior to the date of determination by publicly stating an intention to or actually attempting to (pursuant to proxy solicitation or tender or exchange offer) obtain a seat on the board of directors of a company or effecting a significant change within such company, in each case, that was publicly opposed by the board of directors of such company.

"Affiliate" of any Person means any Person, directly or indirectly, Controlling, Controlled by or under common Control with such Person; provided, however, that (i) the Corporation and its Subsidiaries, on the one hand, and any Holder or any of its Affiliates, on the other hand, shall not be deemed to be Affiliates and (ii) "portfolio companies" (as such term is customarily used among institutional investors) in which any Holder or any of its Affiliates has an investment (whether as debt or equity) shall not be deemed an Affiliate of such Holder.

"Board of Directors" means the Corporation's board of directors or a committee of such board duly authorized to act with the authority of such board.

"Business Day" means any day other than a day on which banks in the State of New York or Jakarta, Indonesia are authorized or obligated to be closed; provided, that for purposes of any deadline set forth herein, the end of a Business Day shall be deemed to be the Close of Business.

"Bylaws" means the Second Amended and Restated Bylaws of the Corporation, as the same may be amended or amended and restated from time to time.

"Capital Stock" of any Person means any and all shares of, interests in, rights to purchase, warrants or options for, participations in, or other equivalents of, in each case however designated, the equity of such Person, but excluding any debt securities convertible into such equity.

"Certificate" means a Physical Certificate or an Electronic Certificate.

"Certificate of Designation" means this Certificate of Designation, as amended or amended and restated from time to time.

"Certificate of Incorporation" means the Second Amended and Restated Certificate of Incorporation of the Corporation, as the same has been and may be amended or amended and restated from time to time.

"Change of Control" means the occurrence of any of the following events after the Initial Issue Date, whether in a single transaction or a series of related transactions:

(a) the sale or transfer, in one or a series of related transactions, of all or substantially all of the assets of the Corporation and its Subsidiaries, taken as a whole, to a Person (other than the Corporation or any of its Subsidiaries or one or more Permitted Holders) and any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act as in effect on the Initial Issue Date), other than one or more Permitted Holders is or becomes the "beneficial owner" (as so defined) of more than 50% of the total voting power of the Voting Stock of the transferee Person in such sale or transfer of assets, as the case may be; provided that (x) so long as the Corporation is a Subsidiary of any Permitted Parent, no person shall be deemed to be or become a beneficial owner of more than 50% of the total voting power of the Voting Stock of the Corporation unless such person shall be or become a beneficial owner of more than 50% of the total voting power of the Voting Stock of such Permitted Parent (other than a Permitted Parent that is a Subsidiary of another Permitted Parent) and (y) any Voting Stock of which any Permitted Holder is the beneficial owner shall not in any case be included in any Voting Stock of which any such Person is the beneficial owner; or

(b) the Corporation becomes aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act as in effect on the Initial Issue Date), other than one or more Permitted Holders or a Permitted Parent, that is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 of the Exchange Act as in effect on the Initial Issue Date) of more than 50% of the total voting power of the Voting Stock of the Corporation; provided that (x) so long as the Corporation is a Subsidiary of any Permitted Parent, no person shall be deemed to be or become a beneficial owner of more than 50% of the total voting power of the Voting Stock of the Corporation unless such person shall be or become a beneficial owner of more than 50% of the total voting power of the Voting Stock of such Permitted Parent (other than a Permitted Parent that is a Subsidiary of another Permitted Parent) and (y) any Voting Stock of which any Permitted Holder is the beneficial owner shall not in any case be included in any Voting Stock of which any such person is the beneficial owner; or

(c) neither shares of Common Stock nor shares of any other Capital Stock into which the Convertible Preferred Stock is convertible are listed for trading on any National Securities Exchange;

provided, further, that with respect to a Permitted Parent, if a majority of the members of the Corporation's Board of Directors and the Corporation's Officers immediately before such transaction are members of the Board of Directors or executive management team, as applicable, of the Permitted Parent thereof, immediately after such transaction, then such transaction shall be deemed not to be a Change of Control pursuant to any transaction or event described in clause (a) or clause (b).

Notwithstanding the preceding or any provision of Section 13(d)-3 of the Exchange Act, (i) a Person or group shall not be deemed to beneficially own Voting Stock subject to a stock or asset purchase agreement, merger agreement, option agreement, warrant agreement or similar agreement (or voting or option or similar agreement related thereto) until the consummation of the acquisition of the Voting Stock in connection with the transactions contemplated by such agreement, (ii) if any group includes one or more Permitted Holders, the issued and outstanding Voting Stock of the Corporation owned, directly or indirectly, by any Permitted Holders that are part of such group shall not be treated as being beneficially owned by such group or any other member of such group for purposes of determining whether a Change of Control has occurred, (iii) a Person or group shall not be deemed to beneficially own the Voting Stock of another Person as a result of its ownership of Voting Stock or other securities of such other Person's parent entity (or related contractual rights) unless it owns 50% or more of the total voting power of the Voting Stock entitled to vote for the election of directors of such parent entity having a majority of the aggregate votes on the board of directors (or similar body) of such parent entity and (iv) the right to acquire Voting Stock (so long as such Person does not have the right to direct the voting of the Voting Stock subject to such right) or any veto power in connection with the acquisition or disposition of Voting Stock shall not cause a party to be a beneficial owner.

Notwithstanding the foregoing but subject to clause (c) above, for the avoidance of doubt, (i) a conversion of the Corporation from a corporation to a limited liability company, limited partnership or other form of entity or an exchange of all of the outstanding Equity Interests in one form of entity for Equity Interests in such other form of entity shall not constitute a Change of Control, so long as immediately following such conversion or exchange the Persons (including the "persons" as that term is used in Section 13(d) of the Exchange Act) who beneficially owned the Capital Stock of the Corporation immediately prior to such transactions continue, immediately thereafter, to beneficially own in the aggregate more than 50% of the Voting Stock of such entity, or continue, immediately thereafter, to beneficially own sufficient Equity Interests in such entity to elect a majority of its directors, managers, trustees or other persons serving in a similar capacity for such entity and (ii) a Change of Control shall not occur if the Corporation becomes a direct or indirect wholly owned Subsidiary of a Permitted Parent and immediately following that transaction no Person (other than a Permitted Parent or one or more Permitted Holders) is the beneficial owner, directly or indirectly, of more than 50% of the Voting Stock of such Permitted Parent (or its general partner, if applicable). No Change of Control shall be deemed to have occurred unless and until such Change of Control has actually been consummated (or has actually occurred in the case of clause (c)).

"Change of Control Notice" has the meaning set forth in Section 9(f).

"Change of Control Repurchase Date" means the date fixed, pursuant to Section 9(c), for the repurchase of any Convertible Preferred Stock by the Corporation pursuant to a Repurchase Upon Change of Control.

"Change of Control Repurchase Notice" means a notice (including a notice substantially in the form of the "Change of Control Repurchase Notice" set forth in Exhibit A) containing the information, or otherwise complying with the requirements, set forth in Section 9(g)(i) and Section 9(g)(ii).

"Change of Control Repurchase Price" means the cash price payable by the Corporation to repurchase any share of Convertible Preferred Stock upon its Repurchase Upon Change of Control, calculated pursuant to Section 9(d).

"Change of Control Repurchase Right" has the meaning set forth in Section 9(a).

"Close of Business" means 5:00 p.m., New York City time.

"Common Stock" means the common stock, par value $0.0001 per share, of the Corporation.

"Common Stock Change Event" has the meaning set forth in Section 12(i)(i).

"Common Stock Liquidity Conditions" shall be satisfied with respect to a Mandatory Conversion if:

(a) (1) the offer and sale of such share of Common Stock by such Holder are registered pursuant to an effective registration statement under the Securities Act and such registration statement is reasonably expected by the Corporation to remain effective and usable, by the Holder to sell such share of Common Stock, continuously during the period from, and including, the date the related Mandatory Conversion Notice or Redemption Notice, as applicable, is sent to, and including, the one (1) year anniversary after the date such share of Common Stock is issued, or (2) such share of Common Stock may be sold or otherwise transferred to a Person (other than the Corporation or an Affiliate of the Corporation) pursuant to an available exemption (including Rule 144) from the registration and prospectus-delivery requirements of, or in a transaction not subject to, the Securities Act;

(b) each share of Common Stock referred to in clause (a) above (i) shall, when issued and when sold or otherwise transferred pursuant to the registration statement referred to in such clause (a), unless sold to the Corporation or an Affiliate of the Corporation, not be evidenced by any Certificate that bears a legend referring to transfer restrictions under the Securities Act or other securities laws; and (ii) shall, when issued, be listed and admitted for trading, without suspension or material limitation on trading, on any of the Texas Stock Exchange, the NYSE, The NYSE American, The NASDAQ Capital Market, The NASDAQ Global Market or The NASDAQ Global Select Market (or any of their respective successors);

(c) (i) the Corporation has not received any written threat or notice of delisting or suspension by the applicable exchange referred to in clause (b)(ii) above with a reasonable prospect of delisting, after giving effect to all applicable notice and appeal periods; and (ii) no such delisting or suspension is reasonably likely to occur or is pending based on the Corporation falling below the minimum listing maintenance requirements of such exchange; and

(d) the conversion of all shares of Convertible Preferred Stock pursuant to such Mandatory Conversion or that are subject to such Redemption, as applicable, would not be limited or otherwise restricted by Section 12(h).

"Competitor" means, as of any date of determination, a Person or any of such Person's Affiliates directly or indirectly engaged in the business of exploration and development and operation of properties for the production of oil, natural gas, and/or natural gas liquids from underground reservoirs in the Midland Basin or the ownership, operation and/or development of midstream energy infrastructure in the Midland Basin, together with such Person's Affiliates, having a fair market value of at least $500 million, as determined in good faith; provided, however, that a private equity fund, financial institution, asset management firm or similar firm shall not be considered a "Competitor" unless it has a controlling equity investment in a portfolio company that is directly engaged in the business of exploration and development and operation of properties for the production of oil, natural gas, and/or natural gas liquids from underground reservoirs in the Midland Basin having a fair market value of at least $500 million, as determined in good faith.

"Consolidated Net Income" means with respect to the Corporation and the Consolidated Restricted Subsidiaries (as defined in the Credit Agreement as of the date hereof), for any period, the aggregate of the net income (or loss) of the Corporation and the Consolidated Restricted Subsidiaries after allowances for taxes for such period determined on a consolidated basis in accordance with GAAP; *provided* that there shall be excluded from such net income (to the extent otherwise included therein) the following: (a) the net income of any Person in which the Corporation or any Consolidated Restricted Subsidiary has an interest (which interest does not cause the net income of such other Person to be consolidated with the net income of the Corporation and the Consolidated Restricted Subsidiaries in accordance with GAAP), except to the extent of the amount of dividends or distributions actually paid in cash during such period by such other Person to the Corporation or to a Consolidated Restricted Subsidiary, as the case may be; (b) the net income (but not loss) during such period of any Consolidated Restricted Subsidiary to the extent that the declaration or payment of dividends or similar distributions or transfers or loans by that Consolidated Restricted Subsidiary is not at the time permitted by operation of the terms of its charter or any agreement, instrument or Governmental Requirement (as defined in the Credit Agreement as of the date hereof) applicable to such Consolidated Restricted Subsidiary or is otherwise restricted or prohibited, in each case determined in accordance with GAAP; (c) the net income (or loss) of any Person acquired in a pooling-of-interests transaction for any period prior to the date of such transaction; (d) any extraordinary gains or losses during such period; (e) any gains or losses attributable to writeups or writedowns of assets; (f) any gain or loss from the sale of assets other than in the ordinary course of business; (g) any income or loss attributable to the early extinguishment of any Debt (as defined in the Credit Agreement as of the date hereof) of the Corporation or a Consolidated Restricted Subsidiary and (h) the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies during such period whether effected through a cumulative effect adjustment or a retroactive application, in each case, in accordance with GAAP.

"Consolidated Total Net Leverage Ratio" means, as of the last day of any fiscal quarter (or any other date of determination), the ratio of Total Net Debt to EBITDAX for the Rolling Period then ending (or the most recently ended Rolling Period for which financial statements are available).

"Continuing Share Reserve Requirement" means, as of any time, a number of shares of Common Stock equal to the product of (a) one and one-half (1.5); and (b) the number of shares of Common Stock that would be issuable (without regard to Section 12(h)) upon conversion of all Convertible Preferred Stock outstanding as of such time (assuming such conversion occurred as of such time); provided that, absent a written request from a Holder, the Board of Directors shall have no obligation to call a special meeting or to act by written consent outside of a regularly scheduled meeting of the Board of Directors to reserve additional shares of Common Stock in connection with the Continuing Share Reserve Requirement.

"Control" (including its correlative meanings "under common Control with" and "Controlled by") means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through ownership of securities or partnership or other interests, by contract or otherwise.

"Controlled Investment Affiliate" means, as to any Person, any other Person, other than any Investor, which directly or indirectly is in control of, is controlled by, or is under common control with such Person and is organized by such Person (or any Person controlling such Person) primarily for making direct or indirect equity or debt investments in the Corporation and/or other companies.

"Conversion Agent" has the meaning set forth in Section 4(d)(i).

"Conversion Consideration" means, with respect to the conversion of any Convertible Preferred Stock, the type and amount of consideration payable to settle such conversion, determined in accordance with Section 12.

"Conversion Date" means an Optional Conversion Date or a Mandatory Conversion Date, as applicable.

"Conversion Price" initially means $9.50 per share of Common Stock; provided, however, that aforesaid initial Conversion Price is subject to adjustment pursuant to Sections 12(f) and 12(g). Each reference in this Certificate of Designation to the Conversion Price as of a particular date without setting forth a particular time on such date shall be deemed to be a reference to the Conversion Price immediately before the Close of Business on such date.

"Conversion Share" means any share of Common Stock issued or issuable upon conversion of any Convertible Preferred Stock.

"Convertible Preferred Stock" has the meaning set forth in Section 1(a).

"Corporation" means HighPeak Energy, Inc., a Delaware corporation, as such name may be changed from time to time in accordance with the General Corporation Law of the State of Delaware.

"Credit Agreement" means that certain credit agreement, dated as of November 20, 2026, by and among, the Corporation, the lenders and issuing banks party thereto and Citibank, N.A., as the administrative agent and collateral agent and as amended or amended and restated and in effect from time to time.

"Credit Agreement Indebtedness Cap" means, as of the applicable time of determination, an aggregate outstanding principal amount of indebtedness under the Credit Agreement of $800,000,000.

"Designated Transferee" means the Person to whom an Initial Holder transfers Convertible Preferred Stock representing at least 5% of the outstanding shares of the Corporation's Common Stock, which shall be determined assuming the conversion of all of the shares of Convertible Preferred Stock, that: (a) is not a Competitor or Activist Investor; and (b) with respect to which such Initial Holder has delivered a written notice to the Corporation at least ten (10) Business Days prior to such transfer designating such Person as a Designated Transferee. In no event shall there be more than one single Designated Transferee of each Initial Holder.

"Dividend" means any Regular Dividend or any Special Dividend.

"Dividend Junior Stock" means any class or series of the Corporation's stock, the terms of which would result in such class or series ranking junior to the Convertible Preferred Stock with respect to the payment of dividends (without regard to whether or not dividends accumulate cumulatively). Dividend Junior Stock includes the Common Stock.

"Dividend Parity Stock" means any class or series of the Corporation's stock (other than the Convertible Preferred Stock), the terms of which would result in such class or series ranking equally with the Convertible Preferred Stock with respect to the payment of dividends (without regard to whether or not dividends accumulate cumulatively).

"Dividend Payment Date" means each Regular Dividend Payment Date with respect to a Regular Dividend and each Special Dividend Payment Date with respect to a Special Dividend.

"Dividend Senior Stock" means any class or series of the Corporation's stock, the terms of which would result in such class or series ranking senior to the Convertible Preferred Stock with respect to the payment of dividends (without regard to whether or not dividends accumulate cumulatively).

"EBITDAX" means, for any period, the sum of Consolidated Net Income for such period plus the following expenses or charges to the extent deducted in the calculation of Consolidated Net Income in such period: interest, income and margin taxes, depreciation, depletion, amortization, accretion of discount, exploration and abandonment expenses, other non-recurring expenses, and all other non-cash charges (including, without limitation, any non-cash charges from or related to Swap Agreements (as defined in the Credit Agreement as of the date hereof)) for such period, minus non-cash gains (including, without limitation, any non-cash gains from or related to Swap Agreements), interest income, and other non-recurring income to the extent added to Consolidated Net Income in such period; provided that Consolidated Net Income shall be calculated after giving pro forma effect to any Material Acquisition (as defined in the Credit Agreement as of the date hereof) or Material Disposition (as defined in the Credit Agreement as of the date hereof) that occurred at any time during such period, as if such Material Acquisition or Material Disposition had occurred on the first day of such period.

"Electronic Certificate" means, if the Board of Directors has provided by resolution that the Convertible Preferred Stock shall be uncertificated, any electronic book entry maintained by the Transfer Agent that evidences any share(s) of Convertible Preferred Stock.

"Equity Interests" means, with respect to any Person, the Capital Stock of such Person and all warrants, options or other rights to acquire Capital Stock of such Person, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock of such Person.

"Exchange Act" means the U.S. Securities Exchange Act of 1934, as amended.

"Expiration Date" has the meaning set forth in Section 12(f)(i)(2).

"Expiration Time" has the meaning set forth in Section 12(f)(i)(2).

"Holder" means a person in whose name any Convertible Preferred Stock is registered on the Registrar's books.

"Holder Repurchase Date" has the meaning set forth in Section 10(c).

"Holder Repurchase Notice" has the meaning set forth in Section 10(e).

"Holder Repurchase Price" means the cash price payable by the Corporation to repurchase any share of Convertible Preferred Stock upon its Repurchase Upon Holder Right, calculated pursuant to Section 10(d).

"Holder Repurchase Right" has the meaning set forth in Section 10(a).

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

"Immediate Family Members" means with respect to any individual, such individual's child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including, in each case, adoptive relationships) and any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

"Initial Change of Control Notice" has the meaning set forth in Section 9(e).

"Initial DIM Holder" means PT Danantara Energy International, or such of its Affiliates to whom an Initial DIM Holder transferred its Convertible Preferred Stock.

"Initial EMP Holder" means PT Tunas Harapan Perkasa, or such of its Affiliates to whom an Initial EMP Holder transferred its Convertible Preferred Stock.

"Initial Holders" means each of the Initial DIM Holder and the Initial EMP Holder.

"Initial Issue Date" means the Closing Date as defined in the Purchase Agreement.

"Initial Liquidation Preference" means one thousand dollars ($1,000.00) per share of Convertible Preferred Stock.

"Initial Share Reserve Requirement" means a number of shares of Common Stock equal to the product of: (a) two (2); and (b) the number of shares of Common Stock that would be issuable (without regard to Section 12(h)) upon conversion of all shares of Convertible Preferred Stock outstanding as of the Initial Issue Date (assuming such conversion occurred on the Initial Issue Date).

"Last Reported Sale Price" of the Common Stock for any Trading Day means the closing sale price per share (or, if no closing sale price is reported, the average of the last bid price and the last ask price per share or, if more than one in either case, the average of the average last bid prices and the average last ask prices per share) of the Common Stock on such Trading Day as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is then listed. If the Common Stock is not listed on a U.S. national or regional securities exchange on such Trading Day, then the Last Reported Sale Price shall be the last quoted bid price per share of Common Stock on such Trading Day in the over-the-counter market as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted on such Trading Day, then the Last Reported Sale Price shall be the average of the mid-point of the last bid price and the last ask price per share of Common Stock on such Trading Day from a nationally recognized independent investment banking firm the Corporation selects.

"Liquidation Junior Stock" means any class or series of the Corporation's stock, the terms of which would result in such class or series ranking junior to the Convertible Preferred Stock with respect to the distribution of assets upon the Corporation's liquidation, dissolution or winding up. Liquidation Junior Stock includes the Common Stock.

"Liquidation Parity Stock" means any class or series of the Corporation's stock (other than the Convertible Preferred Stock), the terms of which would result in such class or series ranking equally with the Convertible Preferred Stock with respect to the distribution of assets upon the Corporation's liquidation, dissolution or winding up.

"Liquidation Preference" means, with respect to any share of Convertible Preferred Stock, an amount equal to (i) the Initial Liquidation Preference per share of Convertible Preferred Stock, *plus* (ii) any accumulated and unpaid dividends (including Regular Dividends and Liquidation Preference Dividends) on such share of Convertible Preferred Stock to, but excluding, the date of payment of such amount (including, for the avoidance of doubt, any Regular Dividend Payment Date and the date of any conversion, redemption or repurchase of any such share).

"Liquidation Preference Dividend" has the meaning set forth in Section 6(a)(i).

"Liquidation Senior Stock" means any class or series of the Corporation's stock, the terms of which would result in such class or series ranking senior to the Convertible Preferred Stock with respect to the distribution of assets upon the Corporation's liquidation, dissolution or winding up.

"Management Stockholders" means (a) the directors, managers, executive officers and other members of management (and their Controlled Investment Affiliates and Immediate Family Members and any permitted transferees thereof) of the Corporation (or a Permitted Parent) who are holders of Equity Interests of the Corporation or any Permitted Parent on the Initial Issue Date together with (b) (i) any new directors or managers whose election by such boards of directors or managers or whose nomination for election by the equity holders of the Corporation or any Permitted Parent, as applicable, was approved by a vote of a majority of the directors or managers of the Corporation or Permitted Parent, as applicable, then still in office who were either directors or managers on the Initial Issue Date or whose election or nomination was previously so approved and (ii) executive officers and other management personnel of the Corporation or any Permitted Parent, as applicable, hired at a time when the directors or managers on the Initial Issue Date together with the directors or managers so approved constituted a majority of the directors or managers of the Corporation or any Permitted Parent, as applicable.

"Mandatory Conversion" has the meaning set forth in Section 12(c)(i).

"Mandatory Conversion Date" means a Conversion Date designated with respect to any Convertible Preferred Stock pursuant to Section 12(c)(i) and Section 12(c)(iii).

"Mandatory Conversion Notice" has the meaning set forth in Section 12(c)(iv).

"Mandatory Conversion Notice Date" means, with respect to a Mandatory Conversion, the date on which the Corporation sends the Mandatory Conversion Notice for such Mandatory Conversion pursuant to Section 12(c)(iv).

"Mandatory Conversion Right" has the meaning set forth in Section 12(c)(i).

"Market Disruption Event" means, with respect to any date, the occurrence or existence, during the one-half hour period ending at the scheduled close of trading on such date on the principal U.S. national or regional securities exchange or other market on which the Common Stock is listed for trading or trades, of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

"National Securities Exchange" means the Texas Stock Exchange, the NYSE, The NYSE American, The NASDAQ Capital Market, The NASDAQ Global Market or The NASDAQ Global Select Market (or any of their respective successors).

"Number of Reserved Shares" means, as of any time, the number of shares of Common Stock that, at such time, the Corporation has reserved (out of its authorized but unissued shares of Common Stock that are not reserved for any other purpose) for delivery upon conversion of the Convertible Preferred Stock.

"NYSE" means The New York Stock Exchange.

"Officer" means the President and Chief Executive Officer, the Chief Operating Officer, the Chief Financial Officer, the Chief Accounting Officer, and any Executive Vice President of the Corporation.

"Open of Business" means 9:00 a.m., New York City time.

"Optional Conversion" means the conversion of any outstanding shares of Convertible Preferred Stock pursuant to Section 12 other than a Mandatory Conversion.

"Optional Conversion Date" means, with respect to the Optional Conversion of any Convertible Preferred Stock, the first Business Day on which the requirements set forth in Section 12(d)(ii) for such conversion are satisfied.

"Optional Conversion Notice" means a notice substantially in the form of the "Optional Conversion Notice" set forth in Exhibit A.

"Paying Agent" has the meaning set forth in Section 4(d)(i).

"Permitted Holder" means (1) any of (A) HighPeak Energy Partners, LP, HighPeak Energy Partners II, LP and/or their respective Affiliates (including the funds, partnerships or other co-investment vehicles managed, advised or controlled by them or their respective Affiliates) or beneficial owners (individually or collectively, "HPK Owners"), (B) any Initial Holder and/or their respective Affiliates (including the funds, partnerships or other co-investment vehicles managed, advised or controlled by them or their respective Affiliates) (individually or collectively, "Investor") and (C) Management Stockholders, (2) any Person that directly or indirectly holds or acquires 100% of the total voting power of the Voting Stock of the Corporation, and of which no other Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), other than any of the Permitted Holders, holds more than 50% of the total voting power of the Voting Stock thereof (such Person, a "Permitted Parent"), (3) any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act) of which any of the Permitted Holders are members; provided that in the case of such group and without giving effect to the existence of such group or any other group, the HPK Owners, Management Stockholders and Investor, collectively, have, directly or indirectly, beneficial ownership of more than 50% of the total voting power of the Voting Stock of the Corporation or any Permitted Parent and (4) any Person acting in the capacity of an underwriter (solely to the extent that and for so long as such Person is acting in such capacity) in connection with a public or private offering of Capital Stock of the Corporation or any Permitted Parent.

"Person" or "person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or other agency or political subdivision thereof. Any division or series of a limited liability company, limited partnership or trust shall constitute a separate "person" under this Certificate of Designation.

"Physical Certificate" means, if the Board of Directors has not provided by resolution that the Convertible Preferred Stock shall be uncertificated, any certificate (other than an Electronic Certificate) evidencing any share(s) of Convertible Preferred Stock, which certificate is substantially in the form set forth in Exhibit A, registered in the name of the Holder of such share(s) and duly executed by the Corporation and countersigned by the Transfer Agent.

"Purchase Agreement" means the Securities Purchase Agreements, dated as of October 6, 2026, by and between the Corporation and the purchasers thereto, as the same may be amended or amended and restated from time to time.

"Qualification Criteria" means, with respect to any Series A Director, that such individual (a) is not a Competitor or Activist Investor, or an Affiliate, employee, director, manager, agent, consultant or advisor thereof, (b) satisfies all applicable United States Securities and Exchange Commission and Nasdaq standards that are generally applied to the other members of the Board of Directors of the Corporation; (c) is not subject to any "bad actor" disqualifying events described in Rule 506(d)(1)(i)-(viii) promulgated under the Securities Act, (d) has not been involved in any event described in Item 2(d) of Schedule 13D of the Exchange Act or Item 401(f) of Regulation S-K under the Securities Act, and (e) is not subject to sanctions or restrictions under trade, economic and financial sanctions laws, regulations, embargoes, and restrictive measures (in each case having the force of law) administered, enacted or enforced from time to time by (i) the United States (including without limitation the Department of Treasury, Office of Foreign Assets Control), (ii) the European Union and enforced by its member states, (iii) the United Nations, (iv) His Majesty's Treasury, or (v) other similar governmental bodies from time to time.

"Record Date" means, with respect to any dividend or distribution on, or issuance to holders of, Convertible Preferred Stock or Common Stock, the date fixed (whether by applicable law, applicable provision of the Certificate of Incorporation or Bylaws, resolution of the Board of Directors or otherwise) to determine the Holders or the holders of Common Stock, as applicable, that are entitled to such dividend, distribution or issuance.

"Redemption" has the meaning set forth in Section 8(a).

"Redemption Date" means the date fixed, pursuant to Section 8(c), for the settlement of the redemption of the Convertible Preferred Stock by the Corporation pursuant to a Redemption.

"Redemption Notice" has the meaning set forth in Section 8(e).

"Redemption Notice Date" means, with respect to a Redemption, the date on which the Corporation sends the Redemption Notice for such Redemption pursuant to Section 8(e).

"Redemption Price" means the consideration payable by the Corporation to repurchase any Convertible Preferred Stock upon its Redemption, calculated pursuant to Section 8(d).

"Reference Property" has the meaning set forth in Section 12(i)(i).

"Reference Property Unit" has the meaning set forth in Section 12(i)(i).

"Register" has the meaning set forth in Section 4(d)(ii).

"Registrar" has the meaning set forth in Section 4(d)(i).

"Regular Dividend Payment Date" means, with respect to any share of Convertible Preferred Stock, each March 31, June 30, September 30 and December 31 of each year, beginning on the first of the foregoing dates occurring after the Initial Issue Date.

"Regular Dividend Rate" means (a) until but excluding the two (2) year anniversary of the Initial Issue Date, (i) six percent (6.0%) per annum if Paid In Cash or (ii) seven and one-half percent (7.5%) per annum if paid as a Liquidation Preference Dividend; (b) from the two (2) year anniversary of the Initial Issue Date, until but excluding the five (5) year anniversary of the Initial Issue Date, (i) seven and one-half percent (7.5%) per annum if Paid In Cash, or (ii) nine percent (9.0%) per annum if paid as a Liquidation Preference Dividend; and (c) on and after the five (5) year anniversary of the Initial Issue Date, ten percent (10.0%) per annum.

"Regular Dividend Record Date" means the Close of Business on either: (a) March 15th, in the case of a Regular Dividend Payment Date occurring on March 31st; (b) June 15th, in the case of a Regular Dividend Payment Date occurring on June 30th; (c) September 15th, in the case of a Regular Dividend Payment Date occurring on September 30th; and (d) December 15th, in the case of a Regular Dividend Payment Date occurring on December 31st, or, if such day is not a Business Day, the first Business Day following such day.

"Regular Dividends" has the meaning set forth in Section 6(a)(i).

"Repurchase Failure" means the failure by the Corporation to effect a Repurchase Upon Change of Control or a Repurchase Upon Holder Right prior to the Repurchase Failure Date.

"Repurchase Failure Date" means 30 days after the Change of Control Notice date or the Repurchase Upon Holder Right notice date, as applicable.

"Requisite Holders" means the Holders holding at least two-thirds (2/3rds) of the outstanding voting power of the Convertible Preferred Stock.

"Repurchase Upon Change of Control" means the repurchase of any Convertible Preferred Stock by the Corporation pursuant to Section 9.

"Repurchase Upon Holder Right" means the repurchase of any Convertible Preferred Stock by the Corporation pursuant to Section 10.

"Restricted Stock Legend" means a legend substantially in the form set forth in Exhibit B.

"Rolling Period" means any period of four (4) consecutive fiscal quarters ending on the last day of such applicable fiscal quarter.

"Rule 144" means Rule 144 under the Securities Act (or any successor rule thereto), as the same may be amended from time to time.

"Securities Act" means the U.S. Securities Act of 1933, as amended.

"Security" means any Convertible Preferred Stock or Conversion Share.

"Share Agent" means the Transfer Agent or any Registrar, Paying Agent or Conversion Agent.

"Special Dividend" has the meaning set forth in Section 6(a)(iii).

"Spin-Off" has the meaning set forth in Section 12(f)(i)(4)(B).

"Spin-Off Valuation Period" has the meaning set forth in Section 12(f)(i)(4)(B).

"Subsidiary" means, when used with reference to any Person, any corporation or other organization, whether incorporated or unincorporated, of which such Person or any other Subsidiary of such Person is a general partner, managing member or serves in a similar capacity, or, with respect to such corporation or other organization, at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions is directly or indirectly owned or controlled by such Person or by any one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries.

"Successor Person" has the meaning set forth in Section 12(i)(iii).

"Tender/Exchange Offer Valuation Period" has the meaning set forth in Section 12(f)(i)(2).

"Total Debt" means, as of any date of determination, the aggregate amount of Debt (as defined in the Credit Agreement as of the date hereof) of the Corporation and its Consolidated Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP. Notwithstanding the foregoing, "Total Debt" shall not include (a) contingent obligations in respect of undrawn letters of credit (whether standby, commercial or trade), bank guarantees, bankers' acceptances, surety, performance, bid, appeal, customs and completion bonds, and performance and completion guarantees, or any similar instruments, (b) obligations under Swap Agreements (as defined in the Credit Agreement as of the date hereof) and (c) obligations under or in respect of the Convertible Preferred Stock so long as such obligations are not classified as debt under GAAP and no mandatory Redemption payment is then due.

"Total Net Debt" means, as of any date of determination, (a) Total Debt minus (b) unrestricted cash held by the Credit Parties (as defined in the Credit Agreement) in Deposit Accounts (as defined in the Credit Agreement) subject to an Account Control Agreement (as defined in the Credit Agreement), in an aggregate amount under this clause (b) not exceeding the greater of $50,000,000 or 10% of the Borrowing Base (as defined in the Credit Agreement) as of such date.

"Trading Day" means any day on which: (a) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded; and (b) there is no Market Disruption Event. If the Common Stock is not so listed or traded, then "Trading Day" means a Business Day.

"Transfer Agent" means Continental Stock Transfer & Trust Company or its successor.

"Transfer-Restricted Security" means any Security that constitutes a "restricted security" (as defined in Rule 144); provided, however, that such Security shall cease to be a Transfer-Restricted Security upon the earliest to occur of the following events:

(a) such Security is sold or otherwise transferred to a Person (other than the Corporation or an Affiliate of the Corporation) pursuant to a registration statement that was effective under the Securities Act at the time of such sale or transfer;

(b) such Security is sold or otherwise transferred to a Person (other than the Corporation or an Affiliate of the Corporation) pursuant to an available exemption (including Rule 144) from the registration and prospectus-delivery requirements of, or in a transaction not subject to, the Securities Act and, immediately after such sale or transfer, such Security ceases to constitute a "restricted security" (as defined in Rule 144); or

(c) (i) such Security is eligible for resale, by a Person that is not an Affiliate of the Corporation and that has not been an Affiliate of the Corporation during the immediately preceding three (3) months, pursuant to Rule 144 without any limitations thereunder as to volume, manner of sale, availability of current public information or notice; and (ii) the Corporation has received such certificates or other documentation or evidence as the Corporation may reasonably require to determine that the Holder, holder or beneficial owner of such Security is not, and that has not been during the immediately preceding three (3) months, an Affiliate of the Corporation.

"Transfer Restrictions Legend" means a legend substantially in the form set forth in Exhibit B.

"Voting Rights" has the meaning set forth in Section 11(a).

"Voting Stock" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the board of directors or other governing body of such Person; provided that with respect to a limited partnership or other entity that does not have a board of directors, Voting Stock means the Capital Stock of the general partner of such limited partnership or other business entity with the ultimate authority to manage the business and operations of such Person.

Section 3. Rules of Construction. For purposes of this Certificate of Designation:

(a) "or" is not exclusive;

(b) "including" means "including without limitation";

(c) "shall" expresses a command;

(d) the "average" of a set of numerical values refers to the arithmetic average of such numerical values;

(e) a merger involving, or a transfer of assets by, a limited liability company, limited partnership or trust shall be deemed to include any division of or by, or an allocation of assets to a series of, such limited liability company, limited partnership or trust, or any unwinding of any such division or allocation;

(f) words in the singular include the plural and words in the plural include the singular, unless the context requires otherwise;

(g) "herein," "hereof" and other words of similar import refer to this Certificate of Designation as a whole and not to any particular Section or other subdivision of this Certificate of Designation, unless the context requires otherwise;

(h) references to currency mean the lawful currency of the United States of America, unless the context requires otherwise; and

(i) the exhibits, schedules and other attachments to this Certificate of Designation are deemed to form part of this Certificate of Designation.

Section 4. Records; Registration.

(a) Form, Dating and Denominations.

(i) Form and Date of Certificates Evidencing Convertible Preferred Stock. Each Certificate evidencing any Convertible Preferred Stock shall: (1) be substantially in the form set forth in Exhibit A; (2) bear the legends required by Section 4(e) or by any provision of the Bylaws or agreement to which the Holder of such Certificate is a party or is otherwise bound and may bear notations, legends or endorsements required by the General Corporation Law of the State of Delaware, any other applicable law, stock exchange rule or usage, as applicable; and (3) be dated as of the date it is countersigned by the Transfer Agent.

(ii) Electronic Certificates; Physical Certificates. Provided that the Board of Directors has provided by resolution that the Convertible Preferred Stock shall be uncertificated, the Convertible Preferred Stock shall be originally issued initially in the form of one or more Electronic Certificates. Subject to receiving the Corporation's written consent, Electronic Certificates may be exchanged for Physical Certificates, and Physical Certificates may be exchanged for Electronic Certificates, upon request by the Holder thereof pursuant to customary procedures, subject to Section 4(f).

(iii) Electronic Certificates; Interpretation. For purposes of this Certificate of Designation: (1) each Electronic Certificate shall be deemed to include the text of the stock certificate set forth in Exhibit A; (2) any legend or other notation that is required to be included on a Certificate shall be deemed to be affixed to any Electronic Certificate notwithstanding that such Electronic Certificate may be in a form that does not permit affixing legends thereto; (3) any reference in this Certificate of Designation to the "delivery" of any Electronic Certificate shall be deemed to be satisfied upon the registration of the electronic book entry representing such Electronic Certificate in the name of the applicable Holder; (4) upon satisfaction of any applicable requirements of the General Corporation Law of the State of Delaware, the Certificate of Incorporation and the Bylaws of the Corporation, and any related requirements of the Transfer Agent, in each case for the issuance of Convertible Preferred Stock in the form of one or more Electronic Certificates, such Electronic Certificates shall be deemed to be executed by the Corporation and countersigned by the Transfer Agent; (5) the term "or" is not exclusive and means "and/or" unless the context in which such phrase is used shall dictate otherwise. Terms defined in the singular in this Certificate of Designation also include the plural and vice versa.

(iv) Appointment of Depositary. If any Convertible Preferred Stock is admitted to the book-entry clearance and settlement facilities of any electronic depositary, then, notwithstanding anything to the contrary in this Certificate of Designation, each reference in this Certificate of Designation to the delivery of, or payment on, any such Convertible Preferred Stock, or the delivery of any related notice or demand, shall be deemed to be satisfied to the extent the applicable procedures of such depositary governing such delivery or payment, as applicable, are satisfied.

(v) No Bearer Certificates; Denominations. The Convertible Preferred Stock shall be issued only in registered form.

(vi) Registration Numbers. Each Certificate evidencing any share of Convertible Preferred Stock shall bear a unique registration number that is not affixed to any other Certificate evidencing any other then-outstanding shares of Convertible Preferred Stock.

(b) Execution, Countersignature and Delivery.

(i) Due Execution by the Corporation. At least two (2) duly authorized Officers shall sign each Certificate evidencing any Convertible Preferred Stock on behalf of the Corporation by manual, facsimile or electronic signature. The validity of any Convertible Preferred Stock shall not be affected by the failure of any Officer whose signature is on any Certificate evidencing such Convertible Preferred Stock to hold, at the time such Certificate is countersigned by the Transfer Agent, the same or any other office at the Corporation.

(ii) Countersignature by Transfer Agent. No Certificate evidencing any share of Convertible Preferred Stock is valid until such Certificate is countersigned by the Transfer Agent. Each Certificate shall be deemed to be duly countersigned only when an authorized signatory of the Transfer Agent (or a duly appointed agent thereof) signs (by manual, facsimile or electronic signature) the countersignature block set forth in such Certificate.

(c) Method of Payment; Delay When Payment Date is Not a Business Day.

(i) Method of Payment.

(1) Electronic Certificates. The Corporation shall pay (or cause the Paying Agent to pay) all cash amounts due with respect to any outstanding shares of Convertible Preferred Stock evidenced by an Electronic Certificate, out of funds legally available therefor, by wire transfer of immediately available funds.

(2) Physical Certificates. The Corporation shall pay (or cause the Paying Agent to pay) all cash amounts due with respect to any outstanding shares of Convertible Preferred Stock evidenced by a Physical Certificate, out of funds legally available therefor, as follows:

(A) if the aggregate Liquidation Preference of the outstanding shares of Convertible Preferred Stock evidenced by such Physical Certificate is at least five million dollars ($5,000,000) (or such lower amount as the Corporation may choose in its sole and absolute discretion) and the Holder of such Convertible Preferred Stock entitled to such cash amount has delivered to the Paying Agent, no later than the time set forth in the next sentence, a written request to receive payment by wire transfer to an account of such Holder within the United States, by wire transfer of immediately available funds to such account; and

(B) in all other cases, by check mailed to the address of such Holder set forth in the Register.

To be timely, such written request must be delivered no later than the Close of Business on the following date: (x) with respect to the payment of any declared cash Dividend due on a Dividend Payment Date for the Convertible Preferred Stock, the related Record Date; and (y) with respect to any other payment, the date that is ten (10) Business Days immediately before the date such payment is due.

(ii) Delay of Payment when Payment Date is Not a Business Day. If the due date for a payment on any outstanding share of Convertible Preferred Stock as provided in this Certificate of Designation is not a Business Day, then, notwithstanding anything to the contrary in this Certificate of Designation, such payment may be made on the immediately following Business Day and no interest, dividend or other amount shall accrue or accumulate on such payment as a result of the related delay. Solely for purposes of the immediately preceding sentence, a day on which the applicable place of payment is authorized or required by applicable law or executive order to close or be closed shall be deemed not to be a "Business Day."

(d) Transfer Agent, Registrar, Paying Agent and Conversion Agent.

(i) Generally. The Corporation designates its principal U.S. executive offices, and any office of the Transfer Agent in the continental United States, as an office or agency where Convertible Preferred Stock may be presented for: (1) registration of transfer or for exchange (the "Registrar"); (2) payment (the "Paying Agent"); and (3) conversion (the "Conversion Agent"). At all times when any shares of Convertible Preferred Stock are outstanding, the Corporation shall maintain an office in the continental United States constituting the Registrar, Paying Agent and Conversion Agent.

(ii) Maintenance of the Register. The Corporation shall keep, or cause there to be kept, a record (the "Register") of the names and addresses of the Holders, the number of shares of Convertible Preferred Stock held by each Holder and the transfer, exchange, repurchase, Redemption and conversion of the Convertible Preferred Stock. Absent manifest error, the entries in the Register shall be conclusive and the Corporation and the Transfer Agent may treat each Person whose name is recorded as a Holder in the Register as a Holder for all purposes to the fullest extent permitted by applicable law. The Register shall be in written form or kept on, or by means of, or in the form of, any information storage device, method or one or more electronic networks or databases; provided that the records so kept can be converted into clearly legible paper form within a reasonable time. The Corporation shall promptly provide a copy of the Register to any Holder upon its written demand.

(iii) Subsequent Appointments. By notice to each Holder, the Corporation may, at any time, appoint any Person (including any Subsidiary of the Corporation) to act as Registrar, Paying Agent or Conversion Agent.

(iv) If the Corporation or any of its Subsidiaries acts as Paying Agent or Conversion Agent, then: (1) it shall segregate for the benefit of the Holders all money and other property held by it as Paying Agent or Conversion Agent; and (2) references in this Certificate of Designation to the Paying Agent or Conversion Agent holding cash or other property, or to the delivery of cash or other property to the Paying Agent or Conversion Agent, in each case for payment or delivery to any Holders or with respect to the Convertible Preferred Stock, shall be deemed to refer to cash or other property so segregated, or to the segregation of such cash or other property, respectively.

(e) Legends.

(i) Restricted Stock Legend.

(1) Each Certificate evidencing any share of Convertible Preferred Stock that is a Transfer-Restricted Security shall bear the Restricted Stock Legend.

(2) If any share of Convertible Preferred Stock is issued in exchange for, in substitution of, or to effect a partial conversion of, any other share(s) of Convertible Preferred Stock (such other share(s) being referred to as the "old share(s)" for purposes of this Section 4(e)(i)(2)), including pursuant to Sections 4(g) or 4(i), then the Certificate evidencing such share shall bear the Restricted Stock Legend if the Certificate evidencing such old share(s) bore the Restricted Stock Legend at the time of such exchange or substitution, or on the related Conversion Date with respect to such conversion, as applicable; provided, however, that the Certificate evidencing such share need not bear the Restricted Stock Legend if such share does not constitute a Transfer-Restricted Security immediately after such exchange or substitution, or as of such Conversion Date, as applicable.

(ii) Transfer Restrictions Legend. Each Certificate evidencing a share of Convertible Preferred Stock shall bear the Transfer Restrictions Legend and be subject to the restrictions on transfer contained in Section 4.2(a) and Section 4.2(b) of the applicable Purchase Agreement.

(iii) Other Legends. The Certificate evidencing any outstanding shares of Convertible Preferred Stock may bear any other legend or text, not inconsistent with this Certificate of Designation, as may be required by applicable law, by the rules of any applicable depositary for the Convertible Preferred Stock or by any securities exchange or automated quotation system on which such Convertible Preferred Stock is traded or quoted or as may be otherwise reasonably determined by the Corporation to be appropriate.

(iv) Acknowledgement and Agreement by the Holders. A Holder's acceptance of any Convertible Preferred Stock evidenced by a Certificate bearing any legend required by this Section 4(e) shall constitute such Holder's acknowledgement of, and agreement to comply with, the restrictions set forth in such legend.

(v) Legends on Conversion Shares.

(1) Each Conversion Share shall bear a legend substantially to the same effect as the Restricted Stock Legend if the Convertible Preferred Stock upon the conversion of which such Conversion Share was issued was (or would have been had it not been converted) a Transfer-Restricted Security at the time such Conversion Share was issued; provided, however, that such Conversion Share need not bear such a legend if the Corporation determines, in its reasonable discretion, that such Conversion Share need not bear such a legend.

(2) Notwithstanding anything to the contrary in Section 4(e)(v)(1), a Conversion Share need not bear a legend pursuant to Section 4(e)(v)(1) if such Conversion Share is issued in an uncertificated form that does not permit affixing legends thereto; provided, however, that the Corporation takes measures (including the assignment thereto of a "restricted" CUSIP number) that it reasonably deems appropriate to enforce the transfer restrictions referred to in such legend.

(f) Transfers and Exchanges; Transfer Taxes; Certain Transfer Restrictions.

(i) Provisions Applicable to All Transfers and Exchanges.

(1) Generally. Subject to this Section 4(f) and any transfer restrictions contained in Section 4.2 of the Purchase Agreement, any outstanding share of Convertible Preferred Stock evidenced by any Certificate may be transferred or exchanged from time to time and the Corporation shall cause the Registrar to record each such transfer or exchange in the Register.

(2) No Service Charge; Transfer Taxes. The Corporation and the Share Agents shall not impose any service charge on any Holder for any transfer, exchange or conversion of any Convertible Preferred Stock, but the Corporation, the Transfer Agent, the Registrar and the Conversion Agent may require payment of a sum sufficient to cover any transfer tax or similar governmental charge that may be imposed in connection with any transfer, exchange or conversion of Convertible Preferred Stock, other than exchanges pursuant to Section 4(g) or Section 4(n) not involving any transfer (provided that (A) any such taxes or charges incurred in connection with the original issuance of the Convertible Preferred Stock shall be paid and borne by the Corporation; and (B) any such taxes or charges incurred in connection with a conversion of the Convertible Preferred Stock pursuant to Section 12 shall be paid and borne as provided in Section 14).

(3) Legends. Each Certificate evidencing any share of Convertible Preferred Stock that is issued upon transfer of, or in exchange for, another share of Convertible Preferred Stock shall bear each legend, if any, required by Section 4(e).

(4) Settlement of Transfers and Exchanges. Upon satisfaction of the requirements of this Certificate of Designation to effect a transfer or exchange of any Convertible Preferred Stock, the Corporation shall cause such transfer or exchange to be effected as soon as reasonably practicable but in no event later than the second (2nd) Business Day after the date of such satisfaction.

(5) Exchanges to Remove Transfer Restrictions. For the avoidance of doubt, and subject to the terms of this Certificate of Designation, as used in this Section 4(f), an "exchange" of a Certificate includes an exchange effected for the sole purpose of removing any Restricted Stock Legend affixed to such Certificate.

(ii) Transfers and Exchanges of Convertible Preferred Stock.

(1) Subject to this Section 4(f), a Holder of any Convertible Preferred Stock evidenced by a Certificate may (x) transfer any number of shares of such Convertible Preferred Stock to one or more other Person(s); and (y) exchange any number of shares of such Convertible Preferred Stock for an equal number of shares of Convertible Preferred Stock evidenced by one or more other Certificates; provided, however, that, to effect any such transfer or exchange, such Holder must, if such Certificate is a Physical Certificate, surrender such Physical Certificate to the office of the Transfer Agent or the Registrar, together with any endorsements or transfer instruments reasonably required by the Corporation, the Transfer Agent or the Registrar.

(2) Upon the satisfaction of the requirements of this Certificate of Designation to effect a transfer or exchange of any number of shares of a Holder's Convertible Preferred Stock evidenced by a Certificate (such Certificate being referred to as the "old Certificate" for purposes of this Section 4(f)(ii)(2)):

(A) such old Certificate shall be promptly cancelled pursuant to Section 4(k);

(B) if fewer than all of the shares of Convertible Preferred Stock evidenced by such old Certificate are to be so transferred or exchanged, then the Corporation shall issue, execute and deliver, and cause the Transfer Agent to countersign, in each case in accordance with Section 4(b), one or more Certificates that (x) each evidence a number of shares of Convertible Preferred Stock and, in the aggregate, evidence a total number of shares of Convertible Preferred Stock equal to the number of shares of Convertible Preferred Stock evidenced by such old Certificate not to be so transferred or exchanged; (y) are registered in the name of such Holder; and (z) bear each legend, if any, required by Section 4(e);

(C) in the case of a transfer to a transferee, the Corporation shall issue, execute and deliver, and cause the Transfer Agent to countersign, in each case in accordance with Section 4(b), one or more Certificates that (x) each evidence a number of shares of Convertible Preferred Stock and, in the aggregate, evidence a total number of shares of Convertible Preferred Stock equal to the number of shares of Convertible Preferred Stock to be so transferred; (y) are registered in the name of such transferee; and (z) bear each legend, if any, required by Section 4(e); and

(D) in the case of an exchange, the Corporation shall issue, execute and deliver, and cause the Transfer Agent to countersign, in each case in accordance with Section 4(b), one or more Certificates that (x) each evidence a number of shares of Convertible Preferred Stock and, in the aggregate, evidence a total number of shares of Convertible Preferred Stock equal to the number of shares of Convertible Preferred Stock to be so exchanged; (y) are registered in the name of the Person to whom such old Certificate was registered; and (z) bear each legend, if any, required by Section 4(e).

(iii) Transfers of Shares Subject to Redemption, Repurchase or Conversion. Notwithstanding anything to the contrary in this Certificate of Designation, the Corporation, the Transfer Agent and the Registrar shall not be required to register the transfer of or exchange any share of Convertible Preferred Stock that has been surrendered for conversion.

(g) Exchange and Cancellation of Convertible Preferred Stock to Be Converted or to Be Repurchased Pursuant to a Repurchase Upon Change of Control, a Repurchase Upon Holder Right or a Redemption.

(i) Partial Conversions of Physical Certificates and Partial Repurchases of Physical Certificates Pursuant to a Repurchase Upon Change of Control, a Repurchase Upon Holder Right or a Redemption. If fewer than all of the shares of Convertible Preferred Stock evidenced by a Physical Certificate (such Physical Certificate being referred to as the "old Physical Certificate" for purposes of this Section 4(g)(i)) are to be converted pursuant to Section 12 or repurchased pursuant to a Repurchase Upon Change of Control, a Repurchase Upon Holder Right, or a Redemption, then, as soon as reasonably practicable after such Physical Certificate is surrendered for such conversion or repurchase, as applicable, the Corporation shall cause such Physical Certificate to be exchanged, pursuant and subject to Section 4(f), for (1) one or more Physical Certificates that each evidence a number of shares of Convertible Preferred Stock and, in the aggregate, evidence a total number of shares of Convertible Preferred Stock equal to the number of shares of Convertible Preferred Stock evidenced by such old Physical Certificate that are not to be so converted or repurchased, as applicable, and deliver such Physical Certificate(s) to such Holder; and (2) a Physical Certificate evidencing a number of shares of Convertible Preferred Stock equal to the number of shares of Convertible Preferred Stock evidenced by such old Physical Certificate that are to be so converted or repurchased, as applicable, which Physical Certificate shall be converted or repurchased, as applicable, pursuant to the terms of this Certificate of Designation; provided, however, that the Physical Certificate referred to in this clause (2) need not be issued at any time after which such shares subject to such conversion or repurchase, as applicable, are deemed to cease to be outstanding pursuant to Section 4(m).

(ii) Cancellation of Convertible Preferred Stock that Is Converted and Convertible Preferred Stock that Is Repurchased Pursuant to a Repurchase Upon Change of Control, a Repurchase Upon Holder Right or a Redemption. If shares of Convertible Preferred Stock evidenced by a Certificate (or any portion thereof that has not theretofore been exchanged pursuant to Section 4(g)(i)) (such Certificate being referred to as the "old Certificate" for purposes of this Section 4(g)(ii)) are to be converted pursuant to Section 12 or repurchased pursuant to a Repurchase Upon Change of Control, a Repurchase Upon Holder Right or a Redemption, then, promptly after the later of the time such Convertible Preferred Stock is deemed to cease to be outstanding pursuant to Section 4(m) and the time such old Certificate is surrendered for such conversion or repurchase, as applicable, (1) such old Certificate shall be cancelled pursuant to Section 4(k); and (2) in the case of a partial conversion or repurchase, the Corporation shall issue, execute and deliver to such Holder, and cause the Transfer Agent to countersign, in each case in accordance with Section 4(b), one or more Certificates that (x) each evidence a number of shares of Convertible Preferred Stock and, in the aggregate, evidence a total number of shares of Convertible Preferred Stock equal to the number of shares of Convertible Preferred Stock evidenced by such old Certificate that are not to be so converted or repurchased, as applicable; (y) are registered in the name of such Holder; and (z) bear each legend, if any, required by Section 4(e).

(h) Status of Converted, Redeemed or Repurchased Shares of Convertible Preferred Stock. If any share of Convertible Preferred Stock is converted, redeemed, repurchased or otherwise acquired by the Corporation, in any manner whatsoever, the share of Convertible Preferred Stock so acquired shall, to the fullest extent permitted by applicable law, be retired and cancelled upon such acquisition, and shall not be reissued as a share of Convertible Preferred Stock. Any share of Convertible Preferred Stock so acquired shall, upon its retirement and cancellation, and upon the taking of any action required by applicable law, become an authorized but unissued share of Preferred Stock undesignated as to series and may be reissued as a part of a new series of Preferred Stock, subject to the conditions and restrictions set forth in the Certificate of Incorporation or imposed by the General Corporation Law of the State of Delaware.

(i) Replacement Certificates. If a Holder of any Convertible Preferred Stock claims that the Certificate(s) evidencing such Convertible Preferred Stock have been mutilated, lost, stolen, destroyed or wrongfully taken, then the Corporation shall issue, execute and deliver, and cause the Transfer Agent to countersign, in each case in accordance with Section 4(b), a replacement Certificate evidencing such Convertible Preferred Stock upon surrender to the Corporation or the Transfer Agent of such mutilated Certificate, or upon delivery to the Corporation or the Transfer Agent of evidence of such loss, taking, destruction or wrongful taking reasonably satisfactory to the Transfer Agent and the Corporation. In the case of a lost, stolen, destroyed or wrongfully taken Certificate evidencing Convertible Preferred Stock, the Corporation and the Transfer Agent may require the Holder or such Holder's representative to provide the Corporation such security or indemnity that is reasonably satisfactory to the Corporation and the Transfer Agent to protect the Corporation and the Transfer Agent from any loss that any of them may suffer if such Certificate is replaced. Every replacement Certificate evidencing Convertible Preferred Stock issued pursuant to this Section 4(i) shall, upon such replacement, be deemed to be evidence of outstanding share(s) of Convertible Preferred Stock, entitled to all of the benefits of this Certificate of Designation equally and ratably with all other shares of Convertible Preferred Stock then outstanding.

(j) Registered Holders. Only the Holder of any share of Convertible Preferred Stock shall have such powers (including voting powers), if any, and the preferences and relative, participating, optional, special or other rights, if any, and the qualifications, limitations or restrictions, if any, as set forth in this Certificate of Designation as the owner of such share of Convertible Preferred Stock.

(k) Cancellation. The Corporation may at any time deliver Certificates evidencing Convertible Preferred Stock, if any, to the Transfer Agent for cancellation. The Registrar, the Paying Agent and the Conversion Agent shall forward to the Transfer Agent each share of Convertible Preferred Stock duly surrendered to them for transfer, exchange, payment or conversion. The Corporation shall cause the Transfer Agent to promptly cancel all Certificates evidencing shares of Convertible Preferred Stock so surrendered to it in accordance with its customary procedures.

(l) Shares Held by the Corporation or its Subsidiaries. Without limiting the generality of Section 4(g) and Section 4(m), in determining whether the Holders of the required number of outstanding shares of Convertible Preferred Stock have concurred in any direction, waiver or consent, shares of Convertible Preferred Stock owned by the Corporation or any of its Subsidiaries shall be deemed not to be outstanding.

(m) Outstanding Shares.

(i) Generally. The shares of Convertible Preferred Stock that are outstanding at any time shall be deemed to be those shares indicated as outstanding in the Register, excluding those shares of Convertible Preferred Stock that have theretofore been: (1) cancelled by the Transfer Agent or delivered to the Transfer Agent for cancellation in accordance with Section 4(k); (2) paid in full upon their conversion or upon their repurchase pursuant to a Repurchase Upon Change of Control, a Repurchase Upon Holder Right or upon their redemption pursuant to a Redemption in accordance with this Certificate of Designation; or (3) deemed to cease to be outstanding to the extent provided in, and subject to, clause (ii), (iii), (iv) or (v) of this Section 4(m).

(ii) Replaced Shares. If any Certificate evidencing any share of Convertible Preferred Stock is replaced pursuant to Section 4(i), then such share shall cease to be outstanding at the time of such replacement, unless the Transfer Agent and the Corporation receive proof reasonably satisfactory to them that such share is held by a "bona fide purchaser" under applicable law.

(iii) Shares to Be Repurchased Pursuant to a Redemption. If, on a Redemption Date, the Paying Agent holds consideration in kind and amount that is sufficient to pay the aggregate Redemption Price due on such date, then (unless there occurs a default in the payment of the Redemption Price): (1) the shares of Convertible Preferred Stock to be redeemed on such date shall be deemed, as of such date, to cease to be outstanding; and (2) the rights of the Holders of such shares of Convertible Preferred Stock, as such, shall terminate with respect to such Convertible Preferred Stock, other than the right to receive the Redemption Price as provided in Section 8 (and, if applicable, declared Dividends as provided in Section 6(b)).

(iv) Shares to Be Repurchased Pursuant to a Repurchase Upon Change of Control or a Repurchase Upon Holder Right. If, on a Change of Control Repurchase Date or a Holder Repurchase Date, as applicable, the Paying Agent holds consideration in kind and amount that is sufficient to pay the aggregate Change of Control Repurchase Price or Holder Repurchase Price due on such date, as applicable, then (unless there occurs a default in the payment of the Change of Control Repurchase Price or Holder Repurchase Price): (1) the shares of Convertible Preferred Stock to be repurchased on such date shall be deemed, as of such date, to cease to be outstanding (without limiting the Corporation's obligations pursuant to Section 6(b)); and (2) the rights of the Holders of such shares of Convertible Preferred Stock, as such, shall terminate with respect to such Convertible Preferred Stock, other than the right to receive the Change of Control Repurchase Price as provided in Section 9 or the Holder Repurchase Price as provided in Section 10 (and, if applicable, declared Dividends as provided in Section 6(b)).

(v) Shares to Be Converted. If any Convertible Preferred Stock is to be converted, then, at the Close of Business on the Conversion Date for such conversion (unless there occurs a default in the delivery of the Conversion Consideration due pursuant to Section 12 upon such conversion): (1) such shares of Convertible Preferred Stock shall be deemed to cease to be outstanding (without limiting the Corporation's obligations pursuant to Section 6(b)); and (2) the rights of the Holders of such shares of Convertible Preferred Stock, as such, shall terminate with respect to such Convertible Preferred Stock, other than the right to receive such Conversion Consideration as provided in Section 12 (and, if applicable, declared Dividends as provided in Section 6(b)).

(n) Notations and Exchanges. Without limiting any rights of Holders pursuant to Section 11, if any valid amendment, supplement or waiver to the Certificate of Incorporation or this Certificate of Designation changes the powers (including voting powers), if any, and the preferences and relative, participating, optional, special or other rights, if any, and the qualifications, limitations or restrictions, if any, of the Convertible Preferred Stock, then the Corporation may, in its discretion, require the Holder of the Certificate evidencing such Convertible Preferred Stock to deliver such Certificate to the Transfer Agent so that the Transfer Agent may place an appropriate notation prepared by the Corporation on such Certificate and return such Certificate to such Holder. Alternatively, at its discretion, the Corporation may, in exchange for such Convertible Preferred Stock, issue, execute and deliver, and cause the Transfer Agent to countersign, in each case in accordance with Section 4(b), a new Certificate evidencing such Convertible Preferred Stock that reflects the changed powers (including voting powers), if any, and the preferences and relative, participating, optional, special or other rights, if any, and the qualifications, limitations or restrictions, if any. The failure to make any appropriate notation or issue a new Certificate evidencing any Convertible Preferred Stock pursuant to this Section 4(n) shall not impair or affect the validity of such amendment, supplement or waiver.

Section 5. **Ranking**. The Convertible Preferred Stock shall rank (a) senior to (i) Dividend Junior Stock with respect to the payment of dividends, and (ii) Liquidation Junior Stock with respect to the distribution of assets upon the Corporation's liquidation, dissolution or winding up; (b) equally with (i) Dividend Parity Stock with respect to the payment of dividends and (ii) Liquidation Parity Stock with respect to the distribution of assets upon the Corporation's liquidation, dissolution or winding up; and (c) subordinate to (i) Dividend Senior Stock with respect to the payment of dividends, (ii) Liquidation Senior Stock with respect to the distribution of assets upon the Corporation's liquidation, dissolution or winding up, and (iii) any existing or future indebtedness (including trade payables) of the Corporation.

Section 6. **Dividends**.

(a) Regular Dividends; Special Dividends.

(i) *Generally.* The Convertible Preferred Stock shall accumulate cumulative dividends at a rate per annum equal to the applicable Regular Dividend Rate on the Liquidation Preference thereof (calculated in accordance with Section 6(a)(ii)), regardless of whether or not declared or assets are legally available for their payment (such dividends that accumulate on the Convertible Preferred Stock pursuant to this sentence, "Regular Dividends"). Regular Dividends shall accrue quarterly in arrears on each Regular Dividend Payment Date with respect to the Convertible Preferred Stock to the Holders as of the immediately preceding Regular Dividend Record Date and such Regular Dividends shall accrue regardless of whether they have been declared. In the Corporation's sole discretion, any Regular Dividends may be paid (A) in cash ("Paid In Cash"), when, as and if declared by the Board of Directors, or any authorized committee thereof or (B) if a Regular Dividend is not Paid In Cash on a Regular Dividend Payment Date, by adding the dollar amount (expressed as an amount per share of Convertible Preferred Stock) of such Regular Dividend (or, if applicable, portion thereof) not paid in cash (without duplication), effective immediately before the Close of Business on the related Regular Dividend Payment Date, to the Liquidation Preference of each share of Convertible Preferred Stock outstanding as of such time, which addition shall occur automatically, without the further need of any action on the part of the Corporation or any other Person (such an increase in the Liquidation Preference, a "Liquidation Preference Dividend"); provided, that if the Corporation does not pay Regular Dividends in cash pursuant to clause (A) above for any applicable period, the Corporation shall instead pay a Liquidation Preference Dividend pursuant to clause (B) above with respect to such period. For the avoidance of doubt, the Corporation may elect to pay any Regular Dividend as a cash Dividend, a Liquidation Preference Dividend or any combination of the two with respect to any Regular Dividends. Dividends on the Convertible Preferred Stock shall accumulate daily in arrears from, and including, the last date on which Dividends have been accrued or paid (or, if no Dividends have been paid, from, and including, the Initial Issue Date) to, but excluding, the next Regular Dividend Payment Date.

(ii) *Computation of Regular Dividends.* Regular Dividends shall be computed on the basis of a 360-day year comprised of twelve 30-day months. Regular Dividends on each share of Convertible Preferred Stock shall accrue on the Liquidation Preference of such share as of immediately before the preceding Regular Dividend Payment Date (or, if there is no preceding Regular Dividend Payment Date, on the Initial Issue Date of such share).

(iii) *Special Dividends*. At any time in which the Liquidation Preference exceeds the Initial Liquidation Preference (the difference between the Liquidation Preference and the Initial Liquidation Preference at such time, the "Accrued Liquidation Preference"), the Corporation may, at the determination of the Board of Directors or any authorized committee thereof, pay a dividend with respect to the Convertible Preferred Stock in cash in an aggregate amount up to the Accrued Liquidation Preference per share then outstanding to each Holder of shares of Convertible Preferred Stock as of the immediately preceding Regular Dividend Record Date (any such dividends pursuant to this sentence, "Special Dividends"). Any such Special Dividends shall reduce the Liquidation Preference of the Convertible Preferred Stock accordingly without any further action by any Person.

(b) Treatment of Dividends Upon Redemption, Repurchase Upon Change of Control, Repurchase Upon Holder Right or Conversion. If the Redemption Date, Change of Control Repurchase Date, Holder Repurchase Date or Conversion Date with respect to any share of Convertible Preferred Stock is after a Record Date for a declared Dividend on the Convertible Preferred Stock and on or before the next Dividend Payment Date, then the Holder of such share at the Close of Business on such Record Date shall be entitled, notwithstanding the related Redemption, Repurchase Upon Change of Control, Repurchase Upon Holder Right or conversion, as applicable, to receive, on or, at the Corporation's election, before such Dividend Payment Date, such declared Dividend on such share.

(c) Dividends on Dividend Parity Stock or Dividend Junior Stock. So long as any (i) Accrued Liquidation Preference remains outstanding or (ii) any Repurchase Failure has occurred, the Corporation shall not (x) redeem, repurchase or otherwise acquire for value, any shares of Dividend Parity Stock or Dividend Junior Stock, other than redemptions, repurchases or other acquisitions of Common Stock in connection with the administration of any employee benefit plan, equity incentive plan or other employee or service provider equity agreement of the Corporation that has been approved by the Board of Directors or (y) declare, pay or set apart for payment any dividends or distributions on Dividend Parity Stock or Dividend Junior Stock, other than any dividends or distributions for which adjustment to the Conversion Price is contemplated by Section 12(f).

Section 7. Rights Upon Liquidation, Dissolution or Winding Up.

(a) Generally. If the Corporation liquidates, dissolves or winds up, whether voluntarily or involuntarily, then, subject to the rights of any of the Corporation's creditors or holders of any outstanding Liquidation Senior Stock and on parity with the holders of any outstanding Liquidation Parity Stock, each share of Convertible Preferred Stock shall entitle the Holder thereof to receive payment for the greater of the amounts set forth in clause (i) and (ii) below out of the Corporation's assets or funds legally available for distribution to the Corporation's stockholders, before any such assets or funds are distributed to, or set aside for the benefit of, any Liquidation Junior Stock:

(i) a liquidation preference equal to an amount in cash that, when taken together with any cash Dividends or other cash payments received by the Holder in respect of such share of Convertible Preferred Stock as of the applicable time of determination, results in the Holder having received an aggregate amount of cash with respect to such share of Convertible Preferred Stock yielding an internal rate of return (calculated using the XIRR function of Microsoft Excel or any successor function) of 10.0% per annum on the Initial Liquidation Preference from the Initial Issue Date of such share of Convertible Preferred Stock to the date immediately prior to the date of determination; and

(ii) the amount such Holder would have received in respect of the number of shares of Common Stock that would be issuable upon conversion of such share of Convertible Preferred Stock in connection with an Optional Conversion pursuant to Section 12 assuming the Conversion Date of such conversion occurs on the date of such payment, without regard to any of the limitations on convertibility contained in Section 12(h).

Upon payment of such amount in full on the outstanding Convertible Preferred Stock pursuant to the foregoing provisions of this Section 7(a), Holders shall have no rights to the Corporation's remaining assets or funds, if any. If such assets or funds are insufficient to fully pay such amount on all outstanding shares of Convertible Preferred Stock and the corresponding amounts payable in respect of all outstanding shares of Liquidation Parity Stock, if any, then, subject to the rights of any of the Corporation's creditors or holders of any outstanding Liquidation Senior Stock, such assets or funds shall be distributed ratably on the outstanding shares of Convertible Preferred Stock and Liquidation Parity Stock in proportion to the full respective distributions to which such shares would otherwise be entitled. For the avoidance of doubt, a reorganization or liquidation pursuant to applicable federal, state or local bankruptcy or insolvency law shall be deemed to constitute a liquidation, dissolution, or winding up of the affairs of the Corporation.

(b) Certain Business Combination Transactions Deemed Not to Be a Liquidation. For purposes of Section 7(a), the Corporation's consolidation or combination with, or merger with or into, or the sale, lease or other transfer of all or substantially all of the Corporation's assets (other than a sale, lease or other transfer in connection with the Corporation's liquidation, dissolution or winding up) to, another Person shall not, in itself, constitute the Corporation's liquidation, dissolution or winding up, even if, in connection therewith, the Convertible Preferred Stock is converted into, or is exchanged for, or represents solely the right to receive, other securities, cash or other property, or any combination of the foregoing.

Section 8. Right of the Corporation to Redeem the Convertible Preferred Stock.

(a) Right to Redeem On or After the Three-Year Anniversary. Subject to the terms of this Section 8, the Corporation has the right, at its election, to redeem, subject to the right of the Holders to convert the Convertible Preferred Stock pursuant to Section 12 prior to such redemption, any or all of the Convertible Preferred Stock, at any time, on a Redemption Date beginning on or after the three (3) year anniversary of the Initial Issue Date, for a cash purchase price equal to the Redemption Price (each such redemption, a "Redemption" or a "Special Redemption").

(b) Redemption Prohibited in Certain Circumstances. The Corporation shall not elect a Special Redemption of, or otherwise send a Redemption Notice in respect of a Special Redemption of, any Convertible Preferred Stock pursuant to this Section 8 unless the Corporation has sufficient funds legally available, and is permitted under the terms of its indebtedness for borrowed money, to fully pay the Redemption Price in respect of all shares of Convertible Preferred Stock called for Special Redemption.

(c) Redemption Date. The Redemption Date for a Special Redemption shall be a Business Day chosen by the Board of Directors that is no less than twenty (20) Business Days after the Redemption Notice Date for such Special Redemption.

(d) Redemption Price. The Redemption Price for any share of Convertible Preferred Stock to be repurchased pursuant to a Special Redemption shall be an amount in cash that, when taken together with any cash Dividends or other cash payments received by the Holder in respect of such share of Convertible Preferred Stock, as of the applicable time of determination, results in the Holder having received an aggregate amount of cash with respect to such share of Convertible Preferred Stock yielding an internal rate of return (calculated using the XIRR function of Microsoft Excel or any successor function) of 10.0% per annum on the Initial Liquidation Preference from the Initial Issue Date of such share of Convertible Preferred Stock to the date immediately prior to the Redemption Date for such Special Redemption.

(e) Redemption Notice. To elect the Redemption of any share of Convertible Preferred Stock, the Corporation must send to the Holder of such share a notice of such Redemption (a "Redemption Notice"), which Redemption Notice must state:

(i) that such share has been called for Redemption under this Certificate of Designation;

(ii) the anticipated Redemption Date for such Redemption; provided, that notice of the fixed Redemption Date (which shall comply with Section 8(c)) shall be provided in writing to the Holders no later than eleven (11) Business Days prior to such Redemption Date;

(iii) the Redemption Price per share of Convertible Preferred Stock;

(iv) if the Redemption Date is after a Record Date for a declared Dividend on the Convertible Preferred Stock and on or before the next Dividend Payment Date, that such Dividend shall be paid in accordance with Section 6(b);

(v) the name and address of the Transfer Agent and the Conversion Agent, as well as instructions whereby the Holder may surrender the Physical Certificate evidencing such share (if a Physical Certificate has been issued in respect of such share) to the Transfer Agent or Conversion Agent;

(vi) that the share of Convertible Preferred Stock called for Redemption may be converted pursuant to Section 12, at any time before the Close of Business on the Business Day immediately before the Redemption Date (or, if the Corporation fails to pay the Redemption Price due on such Redemption Date in full, at any time until such time as the Corporation pays such Redemption Price in full); and

(vii) the Conversion Price in effect on the Redemption Notice Date for such Redemption.

provided that any such Redemption Notice delivered by the Corporation may, at the Corporation's discretion, be subject to one or more conditions precedent, including, but not limited to, refinancing or replacing the Credit Agreement or certain related transactions or events, as the case may be.

(f) Payment of the Redemption Price. The Corporation shall cause the Redemption Price for each share of Convertible Preferred Stock subject to Redemption to be paid to the Holder thereof on or before the applicable Redemption Date.

(g) Optional Conversion following a Redemption Notice. For the avoidance of doubt, any Holder may exercise an Optional Conversion after a Redemption Notice has been received, so long as the Optional Conversion Notice has been submitted prior to the Close of Business on the Business Day immediately before the related Redemption Date. Any shares of Convertible Preferred Stock subject to such Optional Conversion Notice shall no longer be subject to Redemption but shall instead be converted pursuant to Section 12.

Section 9. Right of Holders to Require the Corporation to Repurchase Convertible Preferred Stock Upon a Change of Control.

(a) Change of Control Repurchase Right. Subject to the other terms of this Section 9, if a Change of Control occurs, then each Holder may, but shall not be obligated to, elect (i) effective as of immediately prior to the Change of Control, convert (which conversion shall be mandatory and binding on the Corporation) all, or any number of shares that is less than all, of such Holder's shares of Convertible Preferred Stock pursuant to Section 12 at the then-current Conversion Price or (ii) require the Corporation to repurchase (which repurchase shall be mandatory and binding on the Corporation) (the "Change of Control Repurchase Right") all, or any number of shares that is less than all, of such Holder's shares of Convertible Preferred Stock that have not been converted pursuant to the foregoing clause (i) on the Change of Control Repurchase Date for such Change of Control, out of funds legally available therefor, for a cash purchase price equal to the Change of Control Repurchase Price.

(b) Funds Legally Available for Payment of Change of Control Repurchase Price; Covenant Not to Take Certain Actions. If the Corporation does not have sufficient funds legally available to pay the Change of Control Repurchase Price of all shares of Convertible Preferred Stock that are to be repurchased pursuant to a Repurchase Upon Change of Control, then the Corporation shall: (1) pay the maximum amount of such Change of Control Repurchase Price that can be paid out of funds legally available for payment, which payment shall be made *pro rata* to each Holder based on the total number of shares of Convertible Preferred Stock of such Holder that were otherwise to be repurchased pursuant to such Repurchase Upon Change of Control; and (2) purchase any shares of Convertible Preferred Stock not purchased because of the foregoing limitations at the applicable Change of Control Repurchase Price as soon as practicable after the Corporation is able to make such purchase out of funds legally available for the purchase of such shares of Convertible Preferred Stock. The inability of the Corporation (or its successor) to make a purchase payment for any reason shall not relieve the Corporation (or its successor) from its obligation to effect any required purchase when, as and if permitted by applicable law. If the Corporation fails to pay the Change of Control Repurchase Price in full when due in accordance with this Section 9 in respect of some or all of the shares of Convertible Preferred Stock to be repurchased pursuant to the Change of Control Repurchase Right, the Corporation shall pay Dividends on such shares not repurchased at the applicable Regular Dividend Rate (which shall automatically be increased by 3.5 percent (3.5%) per annum) until such shares are repurchased, payable quarterly in arrears, out of funds legally available, on each Dividend Payment Date, for the period from and including the first Dividend Payment Date (or the Initial Issue Date, as applicable) upon which the Corporation fails to pay the Change of Control Repurchase Price in full when due in accordance with this Section 9 through but not including the day upon which the Corporation pays the Change of Control Repurchase Price in full in accordance with this Section 9. In the event a Holder exercises a Change of Control Repurchase Right pursuant to this Section 9 at a time when the Corporation is restricted or prohibited (contractually or otherwise) from repurchasing some or all of the Convertible Preferred Stock subject to the Change of Control Repurchase Right, the Corporation shall use commercially reasonable efforts to obtain the requisite consents to remove or obtain an exception or waiver to such restrictions or prohibition. Nothing herein shall limit a Holder's right to pursue any other remedies available to such Holder under this Certificate of Designation, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to comply with its obligations under this Section 9. The Corporation shall not voluntarily take any action, or voluntarily engage in any transaction, that would result in a Change of Control unless the Corporation in good faith believes that it will have sufficient funds legally available to fully pay the maximum aggregate Change of Control Repurchase Price that would be payable in respect of such Change of Control on all shares of Convertible Preferred Stock then outstanding.

(c) Change of Control Repurchase Date. The Change of Control Repurchase Date for any Change of Control shall be on or prior to the date of the effectiveness of the Change of Control; provided that, if the Change of Control Repurchase Date is on the date of the effectiveness of the Change of Control, the Change of Control Repurchase Price shall be paid in full concurrently with the closing of such Change of Control.

(d) Change of Control Repurchase Price. The Change of Control Repurchase Price for any share of Convertible Preferred Stock to be repurchased upon a Repurchase Upon Change of Control following a Change of Control is an amount in cash that, when taken together with any cash Dividends or other cash payments received by the Holder in respect of such share of Convertible Preferred Stock, as of the applicable time of determination, results in the Holder having received an aggregate amount of cash with respect to such share of Convertible Preferred Stock yielding an internal rate of return (calculated using the XIRR function of Microsoft Excel or any successor function) of 10.0% per annum on the Initial Liquidation Preference from the Initial Issue Date of such share of Convertible Preferred Stock to the date immediately prior to the applicable Change of Control Repurchase Date.

(e) Initial Change of Control Notice. On or before the thirtieth (30th) Business Day prior to the date on which the Corporation anticipates consummating a Change of Control (or, if the Corporation discovers that a Change of Control may occur less than thirty (30) Business Days prior to the anticipated effective date of such Change of Control, promptly after such discovery by the Corporation), a written notice shall be sent by or on behalf of the Corporation to the Holders as they appear in the records of the Corporation, which notice shall contain the date on which the Change of Control is anticipated to be effected (or, if applicable, the date on which a Schedule TO or other schedule, form or report disclosing a Change of Control was filed) (the "Initial Change of Control Notice"). If the Corporation determines after delivery of an Initial Change of Control Notice that it will not consummate the Change of Control on the anticipated Change of Control date, the Corporation shall promptly (but in any case no fewer than ten (10) Business Days prior to the consummation of the Change of Control), deliver an updated Initial Change of Control Notice.

(f) Change of Control Notice. No less than fifteen (15) Business Days prior to the effective date of a Change of Control, the Corporation shall send to each Holder a notice of such Change of Control (a "Change of Control Notice"). Such Change of Control Notice must state:

(i) briefly, the events causing such Change of Control;

(ii) the effective date of such Change of Control;

(iii) the procedures to deliver such Holder's Convertible Preferred Stock and receive the Change of Control Repurchase Price pursuant to this Section 9;

(iv) the Change of Control Repurchase Date for such Change of Control;

(v) the Change of Control Repurchase Price per share of Convertible Preferred Stock, including reasonable detail of the calculation thereof;

(vi) if the Change of Control Repurchase Date is after a Record Date for a declared Dividend on the Convertible Preferred Stock and on or before the next Dividend Payment Date, that such Dividend shall be paid in accordance with Section 6(b);

(vii) the name and address of the Transfer Agent and the Conversion Agent;

(viii) the Conversion Price in effect on the date of such Change of Control Notice and a description and quantification of any adjustments to the Conversion Price that may result from such Change of Control;

(ix) that Convertible Preferred Stock may be converted pursuant to Section 12 at any time before the Close of Business on the Business Day immediately before the related Change of Control Repurchase Date (or, if the Corporation fails to pay the Change of Control Repurchase Price due on such Change of Control Repurchase Date in full, at any time until such time as the Corporation pays such Change of Control Repurchase Price in full);

(x) that shares of Convertible Preferred Stock for which a Change of Control Repurchase Notice has been duly tendered and not duly withdrawn must be delivered to the Paying Agent for the Holder thereof to be entitled to receive the Change of Control Repurchase Price; and

(xi) that shares of Convertible Preferred Stock that are subject to a Change of Control Repurchase Notice that has been duly tendered may be converted only if such Change of Control Repurchase Notice is withdrawn in accordance with this Certificate of Designation.

No later than ten (10) Business Days after receipt of a Change of Control Notice, any Holder that desires to exercise its rights pursuant to Section 9(a) shall notify the Corporation in writing thereof and shall specify (x) whether such Holder is electing to exercise its rights pursuant to clause (i) and/or (ii) of Section 9(a) and (y) the number of shares of Convertible Preferred Stock subject thereto. The Corporation shall not consummate a Change of Control on a date that is fewer than fifteen (15) Business Days after delivery of a Change of Control Notice to the Holders.

(g) Procedures to Exercise the Change of Control Repurchase Right.

(i) Delivery of Change of Control Repurchase Notice and Shares of Convertible Preferred Stock to Be Repurchased. To exercise its Change of Control Repurchase Right for any share(s) of Convertible Preferred Stock following a Change of Control, the Holder thereof must deliver to the Paying Agent:

(1) before the Close of Business on the Business Day immediately before the related Change of Control Repurchase Date (or such later time as may be required by applicable law), a duly completed, written Change of Control Repurchase Notice with respect to such share(s); and

(2) such share(s), duly endorsed for transfer (to the extent such share(s) are evidenced by one or more Physical Certificates).

(ii) Contents of Change of Control Repurchase Notices. Each Change of Control Repurchase Notice with respect to any share(s) of Convertible Preferred Stock must state:

(1) if such share(s) are evidenced by one or more Physical Certificates, the certificate number(s) of such Physical Certificate(s);

(2) the number of shares of Convertible Preferred Stock to be repurchased; and

(3) that such Holder is exercising its Change of Control Repurchase Right with respect to such share(s).

(iii) Withdrawal of Change of Control Repurchase Notice. A Holder that has delivered a Change of Control Repurchase Notice with respect to any share(s) of Convertible Preferred Stock may withdraw such Change of Control Repurchase Notice by delivering a written notice of withdrawal to the Paying Agent at any time before the Close of Business on the Business Day immediately before the related Change of Control Repurchase Date. Such withdrawal notice must state:

(1) if such share(s) are evidenced by one or more Physical Certificates, the certificate number(s) of such Physical Certificate(s);

(2) the number of shares of Convertible Preferred Stock to be withdrawn; and

(3) the number of shares of Convertible Preferred Stock, if any, that remain subject to such Change of Control Repurchase Notice.

If any Holder delivers to the Paying Agent any such withdrawal notice withdrawing any share(s) of Convertible Preferred Stock from any Change of Control Repurchase Notice previously delivered to the Paying Agent, and such share(s) have been surrendered to the Paying Agent, then such share(s) shall be returned to the Holder thereof.

(h) Payment of the Change of Control Repurchase Price. Subject to Section 9(b), the Corporation shall cause the Change of Control Repurchase Price for each share of Convertible Preferred Stock to be repurchased pursuant to a Repurchase Upon Change of Control to be paid to the Holder thereof on or before the applicable Change of Control Repurchase Date (or, if later in the case such share is evidenced by a Physical Certificate, the date the Physical Certificate evidencing such share is delivered to the Paying Agent).

(i) Third Party May Conduct Repurchase Offer In Lieu of the Corporation. Notwithstanding anything to the contrary in this Section 9, the Corporation shall be deemed to satisfy its obligations under this Section 9 if one or more third parties conduct any Repurchase Upon Change of Control and related offer to repurchase Convertible Preferred Stock otherwise required by this Section 9 in a manner that would have satisfied the requirements of this Section 9 if conducted directly by the Corporation.

(j) Change of Control Agreements. To the fullest extent permitted by applicable law, the Corporation shall not enter into any agreement for (or recommend in favor of) a transaction constituting a Change of Control or take action to consummate any such agreement or such transaction constituting a Change of Control, unless (i) such agreement provides for, and does not interfere with or prevent (as applicable), the exercise by the Holders of their Change of Control Repurchase Right in a manner that is consistent with, and gives effect to, this Section 9 , (ii) the acquiring or surviving Person in such Change of Control represents and covenants, in form and substance reasonably satisfactory to the Board of Directors acting in good faith, that at the closing of such Change of Control that such Person shall have sufficient funds (which may include, without limitation, cash and cash equivalents on the Corporation's balance sheet, the proceeds of any debt or equity financing, available lines of credit or uncalled capital commitments) to consummate such Change of Control and the payment of the Change of Control Repurchase Price in respect of shares of Convertible Preferred Stock that have not been converted into Common Stock prior to the Change of Control Repurchase Date pursuant to this Section 9 or Section 12, as applicable and (iii) such Repurchase Upon Change of Control is consummated, including the payment of the Change of Control Repurchase Price, prior to or concurrent with the closing of such Change of Control transaction.

Section 10. Right of Holders to Require the Corporation to Repurchase Convertible Preferred Stock Following a Certain Date.

(a) Holder Repurchase Right. Subject to the other terms of this Section 10, following the date that is five (5) years and six (6) months after the Initial Issue Date, each Holder may, at its election, require the Corporation to repurchase (which repurchase shall be mandatory and binding on the Corporation) (the "Holder Repurchase Right") all, or any number of shares that is less than all, of such Holder's shares of Convertible Preferred Stock on the Holder Repurchase Date, out of funds legally available therefor, for a cash purchase price equal to the Holder Repurchase Price.

(b) Funds Legally Available for Payment of Holder Repurchase Price. If the Corporation does not have sufficient funds legally available to pay the Holder Repurchase Price of all shares of Convertible Preferred Stock that are to be repurchased pursuant to a Repurchase Upon Holder Right, then the Corporation shall: (1) pay the maximum amount of such Holder Repurchase Price that can be paid out of funds legally available for payment, which payment shall be made *pro rata* to each Holder based on the total number of shares of Convertible Preferred Stock of such Holder that were otherwise to be repurchased pursuant to such Repurchase Upon Holder Right; and (2) purchase any shares of Convertible Preferred Stock not purchased because of the foregoing limitations at the applicable Holder Repurchase Price as soon as practicable after the Corporation is able to make such purchase out of funds legally available for the purchase of such shares of Convertible Preferred Stock. The inability of the Corporation (or its successor) to make a purchase payment for any reason shall not relieve the Corporation (or its successor) from its obligation to effect any required purchase when, as and if permitted by applicable law. If the Corporation fails to pay the Holder Repurchase Price in full when due in accordance with this Section 10 in respect of some or all of the shares of Convertible Preferred Stock to be repurchased pursuant to the Holder Repurchase Right, the Corporation shall pay Dividends on such shares not repurchased at the applicable Regular Dividend Rate (which shall automatically be increased by 3.5 percent (3.5%) per annum) until such shares are repurchased, payable quarterly in arrears, out of funds legally available, on each Dividend Payment Date, for the period from and including the first Dividend Payment Date (or the Initial Issue Date, as applicable) upon which the Corporation fails to pay the Holder Repurchase Price in full when due in accordance with this Section 10 through but not including the day upon which the Corporation pays the Holder Repurchase Price in full in accordance with this Section 10. Notwithstanding the foregoing, in the event a Holder exercises a Holder Repurchase Right pursuant to this Section 10 at a time when the Corporation is restricted or prohibited (contractually or otherwise) from repurchasing some or all of the Convertible Preferred Stock subject to the Holder Repurchase Right, the Corporation shall use commercially reasonable efforts to obtain the requisite consents to remove or obtain an exception or waiver to such restrictions or prohibition. Nothing herein shall limit a Holder's right to pursue any other remedies available to such Holder under this Certificate of Designation, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to comply with its obligations under this Section 10.

(c) Holder Repurchase Date. The Holder Repurchase Date (the "Holder Repurchase Date") shall be the date determined by the Board of Directors, provided that such date is as prompt as practicable, and in any event, no sooner than ten (10) Business Days and no later than fifteen (15) Business Days after the delivery of the Holder Repurchase Notice.

(d) Holder Repurchase Price. The Holder Repurchase Price for any share of Convertible Preferred Stock to be repurchased upon a Repurchase Upon Holder Right is an amount in cash that, when taken together with any cash Dividends or other cash payments received by the Holder in respect of such share of Convertible Preferred Stock, as of the applicable time of determination, results in the Holder having received an aggregate amount of cash with respect to such share of Convertible Preferred Stock yielding an internal rate of return (calculated using the XIRR function of Microsoft Excel or any successor function) of 10.0% per annum on the Initial Liquidation Preference from the Initial Issue Date of such share of Convertible Preferred Stock to the date immediately prior to the applicable Holder Repurchase Date.

(e) Holder Notice. If a Holder elects to exercise its Holder Repurchase Right pursuant to Section 10(a), such Holder shall send to the Corporation a notice of such exercise (a "Holder Repurchase Notice"). Such Holder Repurchase Notice must state (x) the number of shares of Convertible Preferred Stock to be repurchased, (y) if such share(s) are evidenced by one or more Physical Certificates, the certificate number(s) of such Physical Certificate(s), and (z) that such Holder is exercising its Holder Repurchase Right with respect to such share(s). Within ten (10) Business Days of the Corporation's receipt of the Holder Repurchase Notice, the Corporation shall send a notice to such Holder, stating:

(i) the procedures to deliver such Holder's Convertible Preferred Stock and receive the Holder Repurchase Price pursuant to this Section 10;

(ii) the Holder Repurchase Date;

(iii) the Holder Repurchase Price per share of Convertible Preferred Stock, including reasonable detail of the calculation thereof;

(iv) if the Holder Repurchase Date is after a Record Date for a declared Dividend on the Convertible Preferred Stock and on or before the next Dividend Payment Date, that such Dividend shall be paid in accordance with Section 6(b);

(v) the name and address of the Transfer Agent and the Conversion Agent;

(vi) the Conversion Price in effect on the date of such Holder Repurchase Notice and a description and quantification of any adjustments to the Conversion Price that may result;

(vii) that Convertible Preferred Stock may be converted pursuant to Section 12 at any time before the Close of Business on the Business Day immediately before the related Holder Repurchase Date (or, if the Corporation fails to pay the Holder Repurchase Price due on such Holder Repurchase Date in full, at any time until such time as the Corporation pays such Holder Repurchase Price in full);

(viii) that shares of Convertible Preferred Stock for which a Holder Repurchase Notice has been duly tendered and not duly withdrawn must be delivered to the Paying Agent for the Holder thereof to be entitled to receive the Holder Repurchase Price; and

(ix) that shares of Convertible Preferred Stock that are subject to a Holder Repurchase Notice that has been duly tendered may be converted only if such Holder Repurchase Notice is withdrawn in accordance with this Certificate of Designation.

(f) Procedures to Exercise the Holder Repurchase Right.

(i) Delivery of Shares of Convertible Preferred Stock to Be Repurchased. To exercise its Holder Repurchase Right for any share(s) of Convertible Preferred Stock, the Holder thereof must deliver to the Paying Agent such share(s), duly endorsed for transfer (to the extent such share(s) are evidenced by one or more Physical Certificates).

(ii) Withdrawal of Holder Repurchase Notice. A Holder that has delivered a Holder Repurchase Notice with respect to any share(s) of Convertible Preferred Stock may withdraw such Holder Repurchase Notice by delivering a written notice of withdrawal to the Paying Agent at any time before the Close of Business on the Business Day immediately before the related Holder Repurchase Date. Such withdrawal notice must state:

(1) if such share(s) are evidenced by one or more Physical Certificates, the certificate number(s) of such Physical Certificate(s);

(2) the number of shares of Convertible Preferred Stock to be withdrawn; and

(3) the number of shares of Convertible Preferred Stock, if any, that remain subject to such Holder Repurchase Notice.

If any Holder delivers to the Paying Agent any such withdrawal notice withdrawing any share(s) of Convertible Preferred Stock from any Holder Repurchase Notice previously delivered to the Paying Agent, and such share(s) have been surrendered to the Paying Agent, then such share(s) shall be returned to the Holder thereof.

(g) Payment of the Holder Repurchase Price. Subject to Section 10(b), the Corporation shall cause the Holder Repurchase Price for each share of Convertible Preferred Stock to be repurchased pursuant to a Repurchase Upon Holder Right to be paid to the Holder thereof on the applicable Holder Repurchase Date (or, if later in the case such share is evidenced by a Physical Certificate, the date the Physical Certificate evidencing such share is delivered to the Paying Agent).

Section 11. Voting and Other Rights.

(a) Generally. Except as provided by this Certificate of Designation or applicable law, the Holders shall have the right to vote (in their capacity as Holders) together as a single class with the holders of the Common Stock on each matter submitted for a vote or consent by the holders of the Common Stock ("Voting Rights"), and, for these purposes, (i) the Convertible Preferred Stock of each Holder shall entitle such Holder to be treated as if such Holder were the holder of record, as of the Record Date or other relevant date for such matter, of a number of shares of Common Stock equal to the number of shares of Common Stock that would be issuable (determined in accordance with Section 12(e)) upon conversion of such Convertible Preferred Stock assuming such Convertible Preferred Stock were converted with a Conversion Date occurring on such Record Date or other relevant date, and (ii) the Holders shall be entitled to notice of all stockholder meetings or proposed actions by written consent in accordance with the Certificate of Incorporation, the Bylaws and the General Corporation Law of the State of Delaware as if the Holders were holders of Common Stock.

(b) Voting and Consent Rights with Respect to Specified Matters.

(i) Generally. Subject to the other provisions of this Section 11(b), so long as any shares of Convertible Preferred Stock remain outstanding, the Corporation shall not, and shall not permit any of its Subsidiaries to, without the affirmative vote or written consent of the Requisite Holders, voting separately as a single series, take any of the following actions:

(1) amend, alter, repeal, waive or otherwise modify, directly or indirectly, including through merger or conversion, any of the powers, preferences, rights or privileges of the Convertible Preferred Stock or the Holders; provided that, subject to compliance with Section 9, it is understood and agreed that the foregoing shall not apply to any merger or conversion that effects or is a result of a Change of Control, pursuant to which no shares of Convertible Preferred Stock remain outstanding as of immediately following such Change of Control;

(2) amend, alter, repeal, waive or otherwise modify, directly or indirectly, including through merger or conversion, any provision of (x) the Certificate of Incorporation or the Bylaws, in a manner that adversely affects the rights, preferences and privileges or powers, of the Convertible Preferred Stock or (y) otherwise amend the terms of this Certificate of Designation; provided that, subject to compliance with Section 9, it is understood and agreed that the foregoing shall not apply to any merger or conversion that effects or is a result of a Change of Control, pursuant to which no shares of Convertible Preferred Stock remain outstanding as of immediately following such Change of Control;

(3) issue any shares of Dividend Senior Stock, Dividend Parity Stock, Liquidation Senior Stock, Liquidation Parity Stock (including additional shares of Convertible Preferred Stock), or any other shares of Capital Stock or other securities or equity interests that would have or that do have preferences or relative, participating, optional, special or other rights senior to or pari passu with the Convertible Preferred Stock;

(4) create (by reclassification or otherwise) any new class or series of stock of the Corporation having preferences or relative, participating, optional, special or other rights senior to or pari passu with the Convertible Preferred Stock;

(5) increase the size of the Board of Directors to greater than nine (9) directors;

(6) At any time in which a Repurchase Failure has occurred and is continuing, (A) incur, assume or otherwise become liable for, or repay, refinance or replace, any indebtedness for borrowed money, other than (1) borrowings under the Credit Agreement in the ordinary course of business not in excess of the Credit Agreement Indebtedness Cap and (2) repayments under the Credit Agreement; or (B) acquire or dispose of any material assets, other than dispositions the net proceeds of which shall be applied as repayments under the Credit Agreement or to fund a Repurchase Upon Change of Control or a Repurchase Upon Holder Right; or

(7) agree, authorize or commit to do any of the foregoing.

(ii) Subject to the other provisions of this Section 11(b), so long as (x) any shares of Convertible Preferred Stock remain outstanding and (y) the Initial Holders represent Holders of more than two-thirds (2/3^{rds}) of the outstanding shares of Convertible Preferred Stock, the Corporation shall not, and shall not permit any of its Subsidiaries to, without the affirmative vote or written consent of the Requisite Holders, voting separately as a single series, take any of the following actions:

(1) incur, assume or otherwise become liable for any indebtedness for borrowed money, except (x) existing indebtedness (which shall include any current or future draws or borrowings under the Credit Agreement not in excess of the Credit Agreement Indebtedness Cap) and (y) indebtedness if after giving effect to such indebtedness and the use of proceeds thereof, the pro forma Consolidated Total Net Leverage Ratio on a consolidated basis for the most recent four fiscal quarter period does not exceed 1.500 to 1.00, or agree, authorize or commit to do any of the foregoing.

In addition, any amendment that would adversely affect the Conversion Price, Liquidation Preference, the Mandatory Conversion Right, or Change of Control Repurchase Price in a manner that is materially disproportionate to one Holder relative to the other Holders of Convertible Preferred Stock shall require the consent of such affected Holder. No consideration (including any modification of this Certificate of Designation or related transaction document) shall be offered or paid to any person or entity to amend or consent to a waiver or modification of any provision of this Certificate of Designation or related transaction document unless the same consideration is also offered to all holders of the outstanding shares of Convertible Preferred Stock. For clarification purposes, this provision is intended for the Corporation to treat all Holders as a single class and shall not in any way be construed as such Holders acting in concert or as a group with respect to the purchase, disposition or voting of the Convertible Preferred Stock or otherwise.

(iii) Certain Amendments Permitted Without Consent. Notwithstanding Section 11(b)(i)(1) but subject to Section 11(b)(i)(2), the Corporation may amend, modify or repeal any provision of the Certificate of Incorporation, this Certificate of Designation or the Bylaws without the vote or consent of any Holder to amend or correct the Certificate of Incorporation, this Certificate of Designation or the Bylaws to cure any immaterial ambiguity or correct any immaterial omission, defect or inconsistency; provided, that the Corporation shall promptly deliver written notice to each Holder of such amendment, modification or repeal, setting forth in general terms the substance thereof. Any failure to deliver such notice, or any defect therein, shall not impair or affect the validity of any such amendment, modification or repeal.

(c) Procedures for Voting and Consents.

(i) Rules and Procedures Governing Votes and Consents. If any vote of the Holders will be held or solicited, including at an annual meeting or a special meeting of stockholders, then: (1) the Board of Directors will adopt customary rules and procedures at its discretion to govern such vote, subject to the other provisions of this Section 11; and (2) such rules and procedures may include fixing a record date to determine the Holders that are entitled to vote, as applicable, rules governing the solicitation and use of proxies and customary procedures for the nomination by Holders, of directors for election.

(ii) Voting Power of the Convertible Preferred Stock. Except as otherwise set forth in this Certificate of Designation, each share of Convertible Preferred Stock will entitle the holder thereof to one (1) vote on each matter on which the Holders of the Convertible Preferred Stock are entitled to vote separately as a series and not together with the holders of any other class or series of stock.

(iii) Written Consent in Lieu of Stockholder Meeting. Notwithstanding anything to the contrary set forth in the Certificate of Incorporation, any action required or permitted to be taken at a meeting of the holders of the Convertible Preferred Stock may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the Holders having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares of Convertible Preferred Stock then outstanding and entitled to vote were present and voted and shall be delivered to the Corporation (a) by delivery to its registered agent in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which minutes of proceedings of stockholders are recorded or (b) by electronic mail to the Corporation at the e-mail address specified for notices pursuant to Section 17 (or such other e-mail address as the Corporation may designate by notice in accordance with Section 17). The Holders initiating or approving any action by less than unanimous consent of shares of Convertible Preferred Stock entitled to vote on such matter shall use reasonable efforts to promptly notify the other Holders prior to such approval. Delivery and effectiveness of any consent delivered by electronic mail shall be governed by Section 17. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Prompt notice of the taking of corporate action without a meeting by less than unanimous consent of shares of Convertible Preferred Stock entitled to vote on such matter shall, to the extent required by applicable law, be given to those Holders who have not consented and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for notice of such meeting had been the date that consents signed by a sufficient number of Holders to take the action were delivered to the Corporation.

(d) Series A Directors

(i) Up to two individuals in the aggregate may be appointed to the Board of Directors (such individuals, the "Series A Directors") by the Initial Holders (or their Designated Transferees) from time to time subject to and in accordance with the following:

(1) If and for so long as the Initial DIM Holder (or its Designated Transferee) is a Holder and beneficially owns (within the meaning of Rule 13d-3 under the Exchange Act) at least 5%, on an aggregate basis, of the outstanding shares of the Corporation's Common Stock (the "5% Minimum Ownership Threshold"), the Holders of outstanding shares of Convertible Preferred Stock entitled to vote thereon, voting separately as a single class, shall have the exclusive right to appoint and elect one Series A Director, subject to the Qualification Criteria (the "DIM Designee"); provided that the shares of Convertible Preferred Stock held by the Initial DIM Holder (or its Designated Transferee) shall be the only shares of Convertible Preferred Stock entitled to vote thereon.

(2) If and for so long as the Initial EMP Holder (or its Designated Transferee) is a Holder and meets the 5% Minimum Ownership Threshold, the Holders of outstanding shares of Convertible Preferred Stock entitled to vote thereon, voting separately as a single class, shall have the exclusive right to appoint and elect one Series A Director, subject to the Qualification Criteria (the "EMP Designee"); provided that the shares of Convertible Preferred Stock held by the Initial EMP Holder (or its Designated Transferee) shall be the only shares of Convertible Preferred Stock entitled to vote thereon.

(3) If and for so long as (x) the Initial DIM Holder is a Holder and beneficially owns (within the meaning of Rule 13d-3 under the Exchange Act) at least 10%, on an aggregate basis, of the outstanding shares of the Corporation's Common Stock (the "10% Minimum Ownership Threshold") and (y) the right to appoint and elect an EMP Designee is no longer effective, the Holders of outstanding shares of Convertible Preferred Stock entitled to vote thereon, voting separately as a single class, shall have the exclusive right to appoint and elect one Series A Director, subject to the Qualification Criteria (the "Additional DIM Designee"); provided that the shares of Convertible Preferred Stock held by the Initial DIM Holder shall be the only shares of Convertible Preferred Stock entitled to vote thereon.

(4) If and for so long as (x) the Initial EMP Holder is a Holder and meets the 10% Minimum Ownership Threshold and (y) the right to appoint and elect a DIM Designee is no longer effective, the Holders of outstanding shares of Convertible Preferred Stock entitled to vote thereon, voting separately as a single class, shall have the exclusive right to appoint and elect one Series A Director, subject to the Qualification Criteria (the "Additional EMP Designee", and each DIM Designee, EMP Designee, Additional DIM Designee and Additional EMP Designee each being a "Holder Designee"); provided that the shares of Convertible Preferred Stock held by the Initial EMP Holder shall be the only shares of Convertible Preferred Stock entitled to vote thereon.

(5) Notwithstanding anything to the contrary set forth herein or otherwise, at any time that any Holder of outstanding shares of Convertible Preferred Stock has the right to designate a Holder Designee, shares of Convertible Preferred Stock held by the designating Holder shall be the only shares of Convertible Preferred Stock entitled to vote on or consent to the appointment or removal without cause of such Holder Designee (or, to the extent applicable, the Holder Designee whose designating Holder no longer has the right to designate a Series A Director), and the shares of Convertible Preferred Stock owned by any other Holders as of the record date for determining stockholders entitled to vote thereon or the date of any written consent with respect thereto shall have no voting rights with respect to such matter. If a Holder Designee no longer satisfies the Qualification Criteria at any time, the Holder that designated such Holder Designee shall take all lawful action to cause such Holder Designee then serving on the Board of Directors to resign, which resignation may be conditioned on the acceptance thereof by the Board of Directors, or to remove such Holder Designee if such Holder Designee does not promptly resign. If at any time an Additional DIM Designee (or an Additional EMP Designee, as applicable) is serving as a Series A Director and the Initial DIM Holder (or the Initial EMP Holder, as applicable) no longer meets the 10% Minimum Ownership Threshold, the Holder that designated such Holder Designee shall take all lawful action to cause such Holder Designee then serving on the Board of Directors to resign on or before the Corporation's next annual meeting of its stockholders, which resignation may be conditioned on the acceptance thereof by the Board of Directors. If at any time any Holder Designee is serving as a Series A Director and such designating Holder no longer meets the 5% Minimum Ownership Threshold, such designating Holder shall take all lawful action to cause each Holder Designee designated by such Holder then serving on the Board of Directors to resign on or before the Corporation's next annual meeting of its stockholders, which resignation may be conditioned on the acceptance thereof by the Board of Directors. In the event that a vacancy is created on the Board of Directors at any time due to the death, disability, retirement, resignation, or removal of a Holder Designee, the Holder then holding the right to designate such Holder Designee (if any) voting on behalf of the Holders of outstanding shares of Convertible Preferred Stock entitled to vote thereon, voting separately as a single class, shall have the exclusive right to appoint an individual to fill such vacancy, and the shares of Convertible Preferred Stock owned by any other Holders as of the record date for determining stockholders entitled to vote thereon shall have no voting rights with respect to such matter. The size of the Board of Directors shall be increased as of the Initial Issue Date to give effect to the appointment of two Series A Directors to the Board of Directors. The initial Holder Designees shall be appointed to the Board of Directors as of the Initial Issue Date. In the event that any Holder entitled to designate a Holder Designee shall fail to appoint in writing a representative to fill a vacant Series A Director seat on the Board of Directors, such Board of Directors seat shall remain vacant until such time as the applicable Holder elects an individual to fill such seat, and during any period where such seat remains vacant, the Board of Directors nonetheless shall be deemed duly constituted. For purposes of determining beneficial ownership of the Corporation's Common Stock herein, such beneficial ownership shall be determined assuming the conversion of all of the shares of Convertible Preferred Stock. For the avoidance of doubt, except for the transfer of the right to appoint the DIM Designee and the EMP Designee, respectively, to a Designated Transferee of the Initial DIM Holder or the Initial EMP Holder, respectively, the rights under this Section 11(d) shall be non-transferable.

(6) Notwithstanding anything to the contrary in this Certificate of Designation or in the Purchase Agreement, at no time shall the Initial Holders and their respective Designated Transferees, collectively, be entitled to appoint and elect a number of Series A Directors (together with any Purchaser Directors (as defined in the Purchase Agreement)) that would exceed the number obtained by multiplying (x) the sum of (1) the then-aggregate Ownership Percentage of the Initial DIM Holder and its Designated Transferee (if any) and (2) the then-aggregate Ownership Percentage of the Initial EMP Holder and its Designated Transferee (if any), by (y) the then-current total number of directors constituting the Board of Directors, rounded up to the nearest whole number. "Ownership Percentage" shall mean, with respect to any Person as of any date of determination, the percentage obtained by dividing (A) the aggregate number of votes that such Person is entitled to cast on the election of directors by the stockholders of the Corporation generally, in respect of all shares of Common Stock and Convertible Preferred Stock held of record by such Person as of such date, by (B) the aggregate number of votes in the aggregate that all holders of outstanding shares of the Corporation's voting capital stock are entitled to cast on such matters as of such date. If the then-aggregate Ownership Percentage of an Initial Holder and its Designated Transferee (if any) is at least 10% and the application of the first sentence of this Section 11(d)(i)(6) would result in a reduction in the number of Series A Directors that such Initial Holder and/or its Designated Transferee (if any) would otherwise be entitled to nominate or designate hereunder, then, upon written notice from such Initial Holder and/or its Designated Transferee (if any), within ninety (90) days of delivery of such written notice, the Board of Directors shall increase the size of the Board of Directors by one (1) director and appoint an additional individual (who shall be an "Independent Director" under Nasdaq Rule 5605(a)(2) (or the equivalent rules of any other stock exchange on which the Corporation's securities are listed)) to the Board of Directors such that the limitation in the first sentence of this Section 11(d)(i)(6) is not triggered.

(7) For so long as the Initial DIM Holder, the Initial EMP Holder and their respective Designated Transferees, collectively, have the right to appoint and elect two Series A Directors, the Corporation shall not, without the prior consent of each Holder then-entitled to appoint and elect a Series A Director, decrease the size of the Board of Directors to fewer than nine (9) directors.

(ii) Each Series A Director shall be entitled to advancement of expenses and indemnification in the same manner and to the same extent as the other non-executive members of the Board of Directors under the Corporation's organizational documents, the General Corporation Law of the State of Delaware and any indemnification agreements. Any director minimum ownership requirements of the governance principles shall be deemed satisfied in respect of the Series A Director, as applicable, by the Convertible Preferred Stock held by the applicable Holder. The Corporation acknowledges and agrees that it is the indemnitor of first resort (i.e., its obligations to the Series A Director are primary and any obligation of such Holder or its Affiliates to advance expenses or to provide indemnification for the same expenses or liabilities incurred by any Series A Director are secondary).

(iii) If a Repurchase Failure has occurred, each Initial Holder (or its Designated Transferee) shall be entitled to appoint its Series A Director as an observer to the audit committee (the "Audit Committee") of the Board of Directors of the Corporation. Any Audit Committee observer shall be entitled to notice of all meetings of the Audit Committee in the manner that notice is provided to members thereof, shall be entitled to receive all materials provided to members of the Audit Committee, and shall be entitled to attend all meetings of the Audit Committee as a non-voting observer.

Section 12. Conversion.

(a) Generally. Subject to the provisions of this Section 12, the Convertible Preferred Stock may be converted only pursuant to a Mandatory Conversion or an Optional Conversion.

(b) Conversion at the Option of the Holders.

(i) Conversion Right; When Shares May Be Submitted for Optional Conversion. Holders shall have the right to convert all, or any number of shares that is less than all, of their shares of Convertible Preferred Stock pursuant to an Optional Conversion at any time; provided, however, that, notwithstanding anything to the contrary in this Certificate of Designation:

(1) if a Change of Control Repurchase Notice is validly delivered pursuant to Section 9(g)(i) with respect to any share of Convertible Preferred Stock, then, beginning on the Business Day prior to the consummation of the Change of Control, such share may not be submitted for Optional Conversion, except to the extent (A) such share is not subject to such notice, (B) such notice is withdrawn in accordance with Section 9(g)(iii), or (C) the Corporation fails to pay the Change of Control Repurchase Price for such share in accordance with this Certificate of Designation;

(2) no Convertible Preferred Stock may be submitted for Optional Conversion to the extent limited by Section 12(h);

(3) an Optional Conversion Notice for shares of Convertible Preferred Stock that are called for Redemption in accordance with Section 8 may be submitted any time prior to the Close of Business on the Business Day immediately before the related Redemption Date (or, if the Corporation fails to pay the Redemption Price due on such Redemption Date in full, at any time until such time as the Corporation pays such Redemption Price in full);

(4) an Optional Conversion Notice for shares of Convertible Preferred Stock that are subject to Mandatory Conversion may not be submitted after the Close of Business on the Business Day immediately before the related Mandatory Conversion Date; and

(5) no conversion by any Holder shall be permitted until the expiration or early termination of the applicable waiting period, if any, under the HSR Act with respect to any conversion of the Convertible Preferred Stock by such Holder.

(c) Mandatory Conversion at the Corporation's Election.

(i) Mandatory Conversion Right. Subject to the provisions of this Section 12, beginning on the first Trading Day after the third (3rd) anniversary of the Initial Issue Date, the Corporation shall have the right (the "Mandatory Conversion Right"), exercisable at its election, to designate any Business Day as a Conversion Date for the conversion (such a conversion, a "Mandatory Conversion") of any or all of the outstanding shares of Convertible Preferred Stock, but only if the Last Reported Sale Price of the Common Stock for any 30 Trading Days in a 40 Trading Day window before the Mandatory Conversion Notice Date for such Mandatory Conversion, exceeds one hundred and fifty percent (150%) of the Conversion Price (without giving effect to any decrease in the Conversion Price effected pursuant to Section 12(g)(i)). If the Corporation causes less than all of the outstanding shares of Convertible Preferred Stock to be converted, the Corporation shall cause the conversion of Convertible Preferred Stock on a *pro rata* basis among Holders.

(ii) Mandatory Conversion Prohibited in Certain Circumstances. The Corporation shall not exercise its Mandatory Conversion Right, or otherwise send a Mandatory Conversion Notice, with respect to any Convertible Preferred Stock pursuant to this Section 12(c) unless the Common Stock Liquidity Conditions are satisfied with respect to the Mandatory Conversion on the Mandatory Conversion Notice Date. Notwithstanding anything to the contrary in this Section 12(c), the Corporation's exercise of its Mandatory Conversion Right, and any related Mandatory Conversion Notice, shall not apply to any share of Convertible Preferred Stock as to which a Change of Control Repurchase Notice has been duly delivered, and not withdrawn, pursuant to Section 9(g). Notwithstanding anything to the contrary in this Section 12(c), the Corporation cannot exercise its Mandatory Conversion Right with respect to any shares of Convertible Preferred Stock to the extent limited by Section 12(h).

(iii) Mandatory Conversion Date. The Mandatory Conversion Date for any Mandatory Conversion shall be a Business Day of the Corporation's choosing that is no more than thirty (30), nor less than ten (10), Business Days after the Mandatory Conversion Notice Date for such Mandatory Conversion.

(iv) Mandatory Conversion Notice. To exercise its Mandatory Conversion Right with respect to shares of Convertible Preferred Stock, the Corporation must send to the Holders a written notice of such exercise (a "Mandatory Conversion Notice").

(v) Such Mandatory Conversion Notice must state:

(1) that the Corporation has exercised its Mandatory Conversion Right to cause the Mandatory Conversion of the shares of Convertible Preferred Stock under this Certificate of Designation;

(2) the Mandatory Conversion Date for such Mandatory Conversion and the date scheduled for the settlement of such Mandatory Conversion;

(3) the name and address of the Paying Agent and the Conversion Agent, as well as instructions whereby the Holder may surrender such share to the Transfer Agent or Conversion Agent;

(4) that shares of Convertible Preferred Stock subject to Mandatory Conversion may be converted earlier at the option of the Holders thereof pursuant to an Optional Conversion at any time before the Close of Business on the Business Day immediately before the Mandatory Conversion Date; and

(5) the Conversion Price in effect on the Mandatory Conversion Notice Date for such Mandatory Conversion, the number of shares of Common Stock to be issued to such Holder upon conversion of each share of Convertible Preferred Stock held by such Holder and, if applicable, the amount of accumulated and unpaid Regular Dividends, whether or not declared, in respect of such share of Convertible Preferred Stock as of the Mandatory Conversion Date.

(d) Conversion Procedures.

(i) Mandatory Conversion. If the Corporation duly exercises, in accordance with Section 12(c), its Mandatory Conversion Right with respect to shares of Convertible Preferred Stock, then: (1) the Mandatory Conversion of such share(s) shall occur automatically as of the Close of Business on the related Mandatory Conversion Date and without the need for any action on the part of the Holder(s) thereof; and (2) the shares of Common Stock into which shares of Convertible Preferred Stock shall have been converted in such Mandatory Conversion and any cash payable in lieu of fractions of a share of Common Stock pursuant to Section 12(e)(ii) shall be registered in the name of, or paid to, the Holder(s) of such share of Convertible Preferred Stock as of the Close of Business on the related Mandatory Conversion Date.

(ii) Requirements for Holders to Exercise Optional Conversion Right.

(1) Generally. To convert any share of Convertible Preferred Stock evidenced by a Certificate pursuant to an Optional Conversion, the Holder of such share must: (w) complete, sign (by manual, facsimile or electronic signature) and deliver to the Conversion Agent an Optional Conversion Notice (at which time, in the case such Certificate is an Electronic Certificate, such Optional Conversion will become irrevocable); (x) if such Certificate is a Physical Certificate, deliver such Physical Certificate to the Conversion Agent (at which time such Optional Conversion will become irrevocable); (y) furnish any endorsements and transfer documents that the Corporation or the Conversion Agent may require; and (z) if applicable, pay any documentary or other taxes that are required to be paid by the Corporation as a result of a Holder requesting that shares be registered in a name other than such Holder's name as described in Section 14.

(2) Optional Conversion Permitted Only During Business Hours. Convertible Preferred Stock shall be deemed to be surrendered for Optional Conversion only after the Open of Business and before the Close of Business on a day that is a Business Day.

(iii) Treatment of Accumulated Dividends upon Conversion.

(1) No Adjustments for Accumulated Regular Dividends. Without limiting the operation of Section 12(e)(i), the Conversion Price shall not be adjusted to account for any accrued and unpaid Regular Dividends on any shares of Convertible Preferred Stock being converted.

(2) Conversions Between a Record Date and a Dividend Payment Date. If the Conversion Date of any share of Convertible Preferred Stock to be converted is after a Record Date for a declared Dividend on the Convertible Preferred Stock and on or before the next Dividend Payment Date, then such Dividend shall be paid pursuant to Section 6(b) notwithstanding such conversion.

(iv) When Holders Become Stockholders of Record of the Shares of Common Stock Issuable Upon Conversion. The Person in whose name any share of Common Stock is issuable upon conversion of any Convertible Preferred Stock shall be deemed to become the holder of record of such share as of the Close of Business on the Conversion Date for such conversion.

(e) Settlement upon Conversion.

(i) Generally. Subject to Section 12(e)(ii), Section 12(e)(iv), Section 12(h) and Section 16(b), the consideration due upon settlement of the conversion of each share of Convertible Preferred Stock shall consist of a number of shares of Common Stock equal to the quotient obtained by dividing (I) the Liquidation Preference for such shares of Convertible Preferred Stock subject to conversion, by (II) the Conversion Price, in each case, as of immediately after the Close of Business on such Conversion Date.

(ii) Payment of Cash in Lieu of any Fractional Share of Common Stock. Subject to Section 16(b), in lieu of delivering any fractional share of Common Stock otherwise due upon conversion of any Convertible Preferred Stock, the Corporation shall, to the extent it is legally able to do so and permitted under the terms of its indebtedness, pay cash based on the Last Reported Sale Price per share of Common Stock on the Conversion Date for such conversion (or, if such Conversion Date is not a Trading Day, the immediately preceding Trading Day).

(iii) Delivery of Conversion Consideration. Except as provided in Section 12(f)(i)(4)(B) and 12(i), the Corporation shall pay or deliver, as applicable, the Conversion Consideration due upon conversion of any Convertible Preferred Stock on or before the second (2nd) Business Day immediately after the Conversion Date for such conversion.

(iv) Conversion following Repurchase Failure. If a Holder elects to convert any shares of Convertible Preferred Stock following a Repurchase Failure, the consideration due upon settlement of the conversion of each share of Convertible Preferred Stock shall consist of a number of shares of Common Stock equal to the quotient obtained by dividing (I) the Liquidation Preference for such shares of Convertible Preferred Stock subject to conversion (assuming, for such purposes of calculating such Liquidation Preference, that on such Repurchase Failure Date with respect to which the Repurchase Failure occurred, the Regular Dividend Rate for such shares of Convertible Preferred Stock automatically increased by 3.5 percent (3.5%) per annum and continued to accrue in accordance with the terms hereof from and after such Repurchase Failure Date through such assumed Conversion Date), by (II) the Conversion Price, in each case, as of immediately after the Close of Business on such Conversion Date.

(f) Conversion Price Adjustments.

(i) Events Requiring an Adjustment to the Conversion Price. The Conversion Price shall be adjusted from time to time as follows:

(1) Stock Splits and Combinations. If the Corporation issues shares of Common Stock as a dividend or distribution on all or substantially all shares of Common Stock or if the Corporation effects a stock split or a stock combination of the Common Stock (in each case excluding an issuance solely pursuant to a Common Stock Change Event, as to which Section 12(i) shall apply), then the Conversion Price shall be adjusted based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0}{OS_1}$$

where:

CP_0 = the Conversion Price in effect immediately before the Close of Business on the Record Date for such dividend or distribution, or immediately before the Close of Business on the effective date of such stock split or stock combination, as applicable;

CP_1 = the Conversion Price in effect immediately after the Close of Business on such Record Date or effective date, as applicable;

OS_0 = the number of shares of Common Stock outstanding immediately before the Close of Business on such Record Date or effective date, as applicable, without giving effect to such dividend, distribution, stock split or stock combination; and

OS_1 = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, stock split or stock combination.

If any dividend, distribution, stock split or stock combination of the type described in this Section 12(f)(i)(1) is declared or announced, but not so paid or made, then the Conversion Price shall be readjusted, effective as of the date the Board of Directors, or any Officer acting pursuant to authority conferred by the Board of Directors, determines not to pay such dividend or distribution or to effect such stock split or stock combination, to the Conversion Price that would then be in effect had such dividend, distribution, stock split or stock combination not been declared or announced. Any readjustment of the Conversion Price pursuant to the immediately preceding sentence shall be made solely to reverse, in whole or in part, the adjustment to the Conversion Price made on account of such dividend, distribution, stock split or stock combination, and in no event shall any such readjustment, in and of itself, result in a Conversion Price greater than the Conversion Price that would then be in effect had such adjustment never been made; provided, however, that the foregoing shall not limit or prevent any increase in the Conversion Price resulting from any other event requiring an adjustment to the Conversion Price.

(2) Tender Offers or Exchange Offers. If the Corporation or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for shares of Common Stock (other than solely pursuant to an odd-lot tender offer pursuant to Rule 13e-4(h)(5) under the Exchange Act), and the value (determined as of the Expiration Time by the Board of Directors in good faith) of the cash and other consideration paid per share of Common Stock in such tender or exchange offer exceeds the Last Reported Sale Price per share of Common Stock on the Trading Day immediately after the last date (the "Expiration Date") on which tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended), then the Conversion Price shall be decreased based on the following formula:

$$CP_1 = CP_0 \times \frac{SP \times OS_0}{AC + (SP \times OS_1)}$$

where:

CP_0 = the Conversion Price in effect immediately before the time (the "Expiration Time") such tender or exchange offer expires;

CP_1 = the Conversion Price in effect immediately after the Expiration Time;

SP = the average of the Last Reported Sale Prices per share of Common Stock over the ten (10) consecutive Trading Day period (the "Tender/Exchange Offer Valuation Period") beginning on, and including, the Trading Day immediately after the Expiration Date;

OS_0 = the number of shares of Common Stock outstanding immediately before the Expiration Time (including all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);

AC = the aggregate value (determined as of the Expiration Time by the Board of Directors in good faith) of all cash and other consideration paid for shares of Common Stock purchased or exchanged in such tender or exchange offer; and

OS_1 = the number of shares of Common Stock outstanding immediately after the Expiration Time (excluding all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);

provided, however, that the Conversion Price shall in no event be adjusted up pursuant to this Section 12(f)(i)(2), except to the extent provided in the immediately following paragraph. The adjustment to the Conversion Price pursuant to this Section 12(f)(i)(2) shall be calculated as of the Close of Business on the last Trading Day of the Tender/Exchange Offer Valuation Period but shall be given effect immediately after the Expiration Time, with retroactive effect. If the Conversion Date for any share of Convertible Preferred Stock to be converted occurs on the Expiration Date or during the Tender/Exchange Offer Valuation Period, then, notwithstanding anything to the contrary in this Certificate of Designation, the Corporation shall, if necessary, delay the settlement of such conversion until the second (2nd) Business Day after the last Trading Day of the Tender/Exchange Offer Valuation Period.

To the extent such tender or exchange offer is announced but not consummated (including as a result of being precluded from consummating such tender or exchange offer under applicable law), or any purchases or exchanges of shares of Common Stock in such tender or exchange offer are rescinded, the Conversion Price shall be readjusted to the Conversion Price that would then be in effect had the adjustment been made on the basis of only the purchases or exchanges of shares of Common Stock, if any, actually made, and not rescinded, in such tender or exchange offer. Any readjustment of the Conversion Price pursuant to the immediately preceding sentence shall be made solely to reverse, in whole or in part, the decrease to the Conversion Price made on account of such tender or exchange offer, and in no event shall any such readjustment, in and of itself, result in a Conversion Price greater than the Conversion Price that would then be in effect had such decrease never been made; provided, however, that the foregoing shall not limit or prevent any increase in the Conversion Price resulting from any other event requiring an adjustment to the Conversion Price.

(3) Rights, Options and Warrants. If the Corporation distributes, to all or substantially all holders of Common Stock, rights, options or warrants (other than rights issued or otherwise distributed pursuant to a stockholder rights plan, as to which Section 12(f)(i)(4)(A) and Section 12(f)(iii) shall apply) entitling such holders, for a period of not more than sixty (60) calendar days after the Record Date of such distribution, to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced, then the Conversion Price shall be decreased based on the following formula:

$$CP_1 = CP_0 \times \frac{OS + Y}{OS + X}$$

where:

CP_0	=	the Conversion Price in effect immediately before the Close of Business on such Record Date;
CP_1	=	the Conversion Price in effect immediately after the Close of Business on such Record Date;
OS	=	the number of shares of Common Stock outstanding immediately before the Close of Business on such Record Date;
Y	=	a number of shares of Common Stock obtained by dividing (x) the aggregate price payable to exercise such rights, options or warrants by (y) the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced; and
X	=	the total number of shares of Common Stock issuable pursuant to such rights, options or warrants.

provided, however, that the Conversion Price shall in no event be adjusted up pursuant to this Section 12(f)(i)(3), except to the extent provided in the immediately following sentence. To the extent such rights, options or warrants are not so distributed, the Conversion Price shall be readjusted to the Conversion Price that would then be in effect had the decrease to the Conversion Price for such distribution been made on the basis of only the rights, options or warrants, if any, actually distributed. In addition, to the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants (including as a result of such rights, options or warrants not being exercised), the Conversion Price shall be readjusted to the Conversion Price that would then be in effect had the decrease to the Conversion Price for such distribution been made on the basis of delivery of only the number of shares of Common Stock actually delivered upon exercise of such rights, options or warrants. Any readjustment of the Conversion Price pursuant to either of the two immediately preceding sentences shall be made solely to reverse, in whole or in part, the decrease to the Conversion Price made on account of such distribution, and in no event shall any such readjustment, in and of itself, result in a Conversion Price greater than the Conversion Price that would then be in effect had such decrease never been made; provided, however, that the foregoing shall not limit or prevent any increase in the Conversion Price resulting from any other event requiring an adjustment to the Conversion Price.

For purposes of this Section 12(f)(i)(3), in determining whether any rights, options or warrants entitle holders of Common Stock to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date the distribution of such rights, options or warrants is announced, and in determining the aggregate price payable to exercise such rights, options or warrants, there shall be taken into account any consideration the Corporation receives for such rights, options or warrants and any amount payable on exercise thereof, with the value of such consideration, if not cash, to be determined by the Board of Directors in good faith.

(4) Spin-Offs and Other Distributed Property.

(A) *Distributions Other than Spin-Offs*. If the Corporation distributes shares of Capital Stock, evidences of the Corporation's indebtedness or other assets or property of the Corporation, or rights, options or warrants to acquire the Corporation's Capital Stock or other securities, to all or substantially all holders of the Common Stock, excluding:

(I) dividends, distributions, rights, options or warrants for which an adjustment to the Conversion Price is required pursuant to Section 12(f)(i)(1) or Section 12(f)(i)(3);

(II) rights issued or otherwise distributed pursuant to a stockholder rights plan, except to the extent provided in Section 12(f)(iii);

(III) Spin-Offs for which an adjustment to the Conversion Price is required pursuant to Section 12(f)(i)(4)(B);

(IV) a distribution solely pursuant to a tender offer or exchange offer for shares of Common Stock, as to which Section 12(f)(i)(2) shall apply; and

(V) a distribution solely pursuant to a Common Stock Change Event, as to which Section 12(i) shall apply,

then the Conversion Price shall be decreased based on the following formula:

$$CP_1 = CP_0 \times \frac{SP}{FMV + SP}$$

where:

CP_0 = the Conversion Price in effect immediately before the Close of Business on the Record Date for such distribution;

CP_1 = the Conversion Price in effect immediately after the Close of Business on such Record Date;

SP = the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the ex-dividend date for such distribution; and

FMV = the fair market value (as determined by the independent directors of the Board of Directors in good faith), as of such Record Date, of the shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants distributed per share of Common Stock pursuant to such distribution;

provided, however, that the Conversion Price shall in no event be adjusted up pursuant to this Section 12(f)(i)(4)(A), except to the extent provided in the immediately following paragraph, and provided, further, that, if *FMV* is equal to or greater than *SP*, then, in lieu of the foregoing adjustment to the Conversion Price, each Holder shall receive, for each share of Convertible Preferred Stock held by such Holder on such Record Date, at the same time and on the same terms as holders of Common Stock the amount and kind of shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants that such Holder would have received in such distribution if such Holder had owned, on such Record Date, a number of shares of Common Stock equal to the number of shares of Common Stock that would be issuable (determined in accordance with Section 12(e)) in respect of one (1) share of Convertible Preferred Stock that is converted with a Conversion Date occurring on such Record Date (subject to the same arrangements, if any, in such distribution not to issue or deliver a fractional portion of any Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants, but with such arrangement applying separately to each Holder and computed based on the total number of shares of Convertible Preferred Stock held by such Holder on such Record Date).

To the extent such distribution is not so paid or made, the Conversion Price shall be readjusted to the Conversion Price that would then be in effect had the adjustment been made on the basis of only the distribution, if any, actually made or paid. Any readjustment of the Conversion Price pursuant to the immediately preceding sentence shall be made solely to reverse, in whole or in part, the decrease to the Conversion Price made on account of such distribution, and in no event shall any such readjustment, in and of itself, result in a Conversion Price greater than the Conversion Price that would then be in effect had such decrease never been made; provided, however, that the foregoing shall not limit or prevent any increase in the Conversion Price resulting from any other event requiring an adjustment to the Conversion Price.

(B) *Spin-Offs*. If the Corporation distributes or dividends shares of Capital Stock of any class or series, or similar equity interests, of or relating to an Affiliate or Subsidiary or other business unit of the Corporation to all or substantially all holders of the Common Stock (other than solely pursuant to (x) a Common Stock Change Event, as to which Section 12(i) shall apply, (y) a tender offer or exchange offer for shares of Common Stock, as to which Section 12(f)(i)(2) shall apply; or (z) rights, options or warrants, as to which Section 12(f)(i)(3) shall apply), and such Capital Stock or equity interests are listed or quoted (or will be listed or quoted upon the consummation of the transaction) on a U.S. National Securities Exchange (a "Spin-Off"), then the Conversion Price shall be decreased based on the following formula:

$$CP_1 = CP_0 \times \frac{SP}{FMV + SP}$$

where:

CP_0 = the Conversion Price in effect immediately before the Close of Business on the Record Date for such Spin-Off;

CP_1 = the Conversion Price in effect immediately after the Close of Business on such Record Date;

SP = the average of the Last Reported Sale Prices per share of Common Stock for each Trading Day in the Spin-Off Valuation Period (as defined below); and

FMV = the product of (x) the average of the Last Reported Sale Prices per share or unit of the Capital Stock or equity interests distributed in such Spin-Off over the ten (10) consecutive Trading Day period (the "Spin-Off Valuation Period") beginning on, and including, the ex-dividend date for such Spin-Off (such average to be determined as if references to Common Stock in the definitions of "Last Reported Sale Price," "Trading Day" and "Market Disruption Event" were instead references to such Capital Stock or equity interests); and (y) the number of shares or units of such Capital Stock or equity interests distributed per share of Common Stock in such Spin-Off.

provided, however, that the Conversion Price shall in no event be adjusted up pursuant to this Section 12(f)(i)(4)(B), except to the extent provided in the immediately following paragraph. The adjustment to the Conversion Price pursuant to this Section 12(f)(i)(4)(B) shall be calculated as of the Close of Business on the last Trading Day of the Spin-Off Valuation Period but shall be given effect immediately after the Close of Business on the Record Date for the Spin-Off, with retroactive effect. If the Conversion Date for any share of Convertible Preferred Stock to be converted occurs during the Spin-Off Valuation Period, then, notwithstanding anything to the contrary in this Certificate of Designation, the Corporation shall, if necessary, delay the settlement of such conversion until the second (2nd) Business Day after the last Trading Day of the Spin-Off Valuation Period.

To the extent any dividend or distribution of the type described in Section 12(f)(i)(4)(B) is declared but not made or paid, the Conversion Price shall be readjusted to the Conversion Price that would then be in effect had the adjustment been made on the basis of only the dividend or distribution, if any, actually made or paid. Any readjustment of the Conversion Price pursuant to the immediately preceding sentence shall be made solely to reverse, in whole or in part, the decrease to the Conversion Price made on account of such distribution, and in no event shall any such readjustment, in and of itself, result in a Conversion Price greater than the Conversion Price that would then be in effect had such decrease never been made; provided, however, that the foregoing shall not limit or prevent any increase in the Conversion Price resulting from any other event requiring an adjustment to the Conversion Price.

(ii) No Adjustments in Certain Cases.

(1) Certain Events. Without limiting the operation of Section 12(e)(i), the Corporation shall not be required to adjust the Conversion Price except pursuant to Section 12(f)(i). Notwithstanding anything to the contrary in this Certificate of Designation, and without limiting the foregoing, the Corporation shall not be required to adjust the Conversion Price on account of:

(A) any declaration and/or payment of Dividends on the Convertible Preferred Stock pursuant to Section 6;

(B) upon the issuance of any shares of Common Stock or options or rights to purchase such shares pursuant to any equity-based compensation plans and agreements maintained or sponsored by the Corporation or its Subsidiaries for the benefit of their respective current or former employees, directors, officers or other service providers, including, without limitation, the HighPeak Energy, Inc. Second Amended and Restated Long Term Incentive Plan;

(C) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right, or exercisable, exchangeable or convertible security, including the Convertible Preferred Stock; or

(D) any declaration and/or payment of Dividends in cash on any shares of Common Stock.

(iii) Stockholder Rights Plans. If any shares of Common Stock are to be issued upon conversion of any Convertible Preferred Stock and, at the time of such conversion, the Corporation has in effect any stockholder rights plan, then the Holder of such Convertible Preferred Stock shall be entitled to receive, in addition to, and concurrently with the delivery of, the consideration otherwise due upon such conversion, the rights set forth in such stockholder rights plan, unless such rights have separated from the Common Stock at such time, in which case, and only in such case, the Conversion Price shall be adjusted pursuant to Section 12(f)(i)(4)(A) on account of such separation as if, at the time of such separation, the Corporation had made a distribution of the type referred to in such Section 12(f)(i)(4)(A) to all holders of Common Stock, subject to readjustment pursuant to Section 12(f)(i)(4)(A) if such rights expire, terminate or are redeemed.

(iv) Determination of the Number of Outstanding Shares of Common Stock. For purposes of Section 12(f)(i), the number of shares of Common Stock outstanding at any time shall: (1) include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock; and (2) exclude shares of Common Stock held in the Corporation's treasury (unless the Corporation pays any dividend or makes any distributions on shares of Common Stock held in its treasury).

(v) Calculations. All calculations with respect to the Conversion Price and adjustments thereto shall be made to the nearest 1/100th of a cent (with 5/1,000ths rounded upward).

(vi) Notice of Conversion Price Adjustments. Upon the effectiveness of any adjustment to the Conversion Price pursuant to Section 12(f)(i), the Corporation shall promptly send notice to the Holders containing: (1) a brief description of the transaction or other event on account of which such adjustment was made; (2) the Conversion Price in effect immediately after such adjustment; and (3) the effective time of such adjustment.

(g) Voluntary Conversion Price Decreases.

(i) Generally. To the fullest extent permitted by applicable law and applicable stock exchange rules, the Corporation, from time to time, may (but is not required to) decrease the Conversion Price by any amount if: (1) the Board of Directors determines that such decrease is in the Corporation's best interest or that such decrease is advisable to avoid or diminish any income tax imposed on holders of Common Stock or rights to purchase Common Stock as a result of any dividend or distribution of shares (or rights to acquire shares) of Common Stock or any similar event; (2) such decrease is in effect for a period of at least twenty (20) Business Days; and (3) such decrease is irrevocable during such period; provided, however, that any such decrease that would be reasonably expected to result in any income tax imposed on the Holders shall require the affirmative vote or consent of the Requisite Holders.

(ii) Notice of Voluntary Decrease. If the Board of Directors determines to decrease the Conversion Price pursuant to Section 12(g)(i), then, no later than the first Business Day of the related twenty (20) Business Day period referred to in Section 12(g)(i), the Corporation will send notice to each Holder, the Transfer Agent and the Conversion Agent of such decrease to the Conversion Price, the amount thereof and the period during which such decrease will be in effect.

(h) Restriction on Conversions.

(i) Share Reserve Provisions. On the Initial Issue Date, the Number of Reserved Shares is not less than the Initial Share Reserve Requirement. The Corporation shall at all times reserve and keep available a Number of Reserved Shares to be no less than the Continuing Share Reserve Requirement at any time when any Convertible Preferred Stock is outstanding (including, if applicable, and to the fullest extent permitted by applicable law, by seeking the approval of its stockholders to amend the Certificate of Incorporation to increase the number of authorized shares of Common Stock).

(i) Effect of Common Stock Change Event.

(i) Generally. If there occurs any:

(1) recapitalization, reclassification or change of the Common Stock, other than (x) changes solely resulting from a stock split or a stock combination of the Common Stock, (y) a change only in par value or from par value to no par value or no par value to par value or (z) recapitalization, reclassifications or change of the Common Stock that do not involve the issuance of any other series or class of securities;

(2) consolidation, merger, business combination or binding or statutory share exchange involving the Corporation;

(3) sale, lease or other transfer of all or substantially all of the assets of the Corporation and its Subsidiaries, taken as a whole, to any Person; or

(4) other substantially similar event,

and, as a result of which, the Common Stock is converted into, or is exchanged for, or represents solely the right to receive, other securities, cash or other property, or any combination of the foregoing (such an event, a "Common Stock Change Event," and such other securities, cash or property, the "Reference Property," and the amount and kind of Reference Property that a holder of one (1) share of Common Stock would be entitled to receive on account of such Common Stock Change Event (without giving effect to any arrangement not to issue or deliver a fractional portion of any security or other property), a "Reference Property Unit"), then, notwithstanding anything to the contrary in this Certificate of Designation,

(A) from and after the effective time of such Common Stock Change Event: (I) the consideration due upon conversion of any Convertible Preferred Stock shall be determined in the same manner as if each reference to any number of shares of Common Stock in this Section 12 or in Section 13, or in any related definitions, were instead a reference to the same number of Reference Property Units; (II) for purposes of Section 11, each reference to any percentage of Common Stock in such Section (or in any related definitions) shall instead be deemed to be a reference to the same percentage of Reference Property Units; and (III) for purposes of the definitions of "Change of Control," the terms "Common Stock" and "common equity" shall be deemed to mean the common equity (including depositary receipts representing common equity), if any, forming part of such Reference Property; and

(B) if such Reference Property Unit consists entirely of cash, then the Corporation shall pay the cash due in respect of all conversions whose Conversion Date occurs on or after the effective date of such Common Stock Change Event no later than the tenth (10th) Business Day after the relevant Conversion Date; and

(C) for these purposes, the Last Reported Sale Price of any Reference Property Unit or portion thereof that does not consist of a class of securities shall be the fair value of such Reference Property Unit or portion thereof, as applicable, determined in good faith by the Corporation (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

If the Reference Property consists of more than a single type of consideration to be determined based in part upon any form of stockholder election, then the composition of the Reference Property Unit shall be deemed to be the weighted average of the types and amounts of consideration actually received, per share of Common Stock, by the holders of Common Stock. The Corporation shall notify the Holders of such weighted average as soon as practicable after such determination is made.

(ii) Compliance Covenant. The Corporation shall not become a party to any Common Stock Change Event unless its terms are consistent with this Section 12(i).

(iii) Execution of Supplemental Instruments. On or before the date the Common Stock Change Event becomes effective, the Corporation and, if applicable, the resulting, surviving or transferee Person (if not the Corporation) of such Common Stock Change Event (the "Successor Person") shall execute and deliver such supplemental instruments, if any, as the Corporation reasonably determines are necessary or desirable to: (1) provide for subsequent adjustments to the Conversion Price pursuant to Section 12(f)(i) in a manner consistent with this Section 12(i); and (2) give effect to such other provisions, if any, as the Corporation reasonably determines are appropriate to preserve the economic interests of the Holders and to give effect to Section 12(i)(i). If the Reference Property includes shares of stock or other securities or assets of a Person other than the Successor Person, then such other Person shall also execute such supplemental instrument(s), if any, and such supplemental instrument(s) shall contain such additional provisions, if any, that the Corporation reasonably determines are appropriate to preserve the economic interests of Holders.

(iv) Notice of Common Stock Change Event. The Corporation shall provide notice of each Common Stock Change Event to Holders as promptly as possible after the effective date of the Common Stock Change Event.

Section 13. Certain Provisions Relating to the Issuance of Common Stock.

(a) Equitable Adjustments to Prices. Whenever this Certificate of Designation requires the Corporation to calculate the average of the Last Reported Sale Prices, or any function thereof, over a period of multiple days (including to calculate an adjustment to the Conversion Price), the Corporation shall make appropriate adjustments, if any, to those calculations to account for any adjustment to the Conversion Price pursuant to Section 12(f)(i) that becomes effective, or any event requiring such an adjustment to the Conversion Price where the effective date or Expiration Date, as applicable, of such event occurs, at any time during such period.

(b) Status of Shares of Common Stock. Each share of Common Stock delivered upon conversion of the Convertible Preferred Stock of any Holder shall be a newly issued share and shall be duly authorized and validly issued, fully paid, non-assessable, free from preemptive rights and free of any lien or adverse claim (except to the extent of any lien or adverse claim created by the action or inaction of such Holder or the Person to whom such share of Common Stock shall be delivered). If the Common Stock is then listed on any securities exchange, or quoted on any inter-dealer quotation system, then the Corporation shall cause each such share of Common Stock, when so delivered, to be admitted for listing on such exchange or quotation on such system.

Section 14. Taxes. The Corporation shall pay any and all stock transfer, documentary, stamp and similar taxes that may be payable in respect of any issuance or delivery of shares of Convertible Preferred Stock or shares of Common Stock or other securities issued on account of Convertible Preferred Stock pursuant to this Certificate of Designation; provided, however, that in the case of conversion of Convertible Preferred Stock, the Corporation shall not be required to pay any such tax that may be payable in respect of any transfer involved in the issuance or delivery of shares of Convertible Preferred Stock, shares of Common Stock or other securities to a beneficial owner other than the beneficial owner of the Convertible Preferred Stock immediately prior to such conversion, and shall not be required to make any such issuance, delivery or payment unless and until the Person otherwise entitled to such issuance, delivery or payment has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid or is not payable.

Section 15. **Term**. Except as expressly provided in this Certificate of Designation, the shares of Convertible Preferred Stock shall not be redeemable or otherwise mature and the term of the Convertible Preferred Stock shall be perpetual.

Section 16. **Calculations.**

(a) Responsibility; Schedule of Calculations. Except as otherwise provided in this Certificate of Designation, the Corporation shall be responsible for making initial calculations called for under this Certificate of Designation, including determinations of the Conversion Price, the Last Reported Sale Prices and accumulated Regular Dividends on the Convertible Preferred Stock. The Corporation and the Board of Directors, as applicable, will make all calculations in good faith, and, absent manifest error, its calculations will be final and binding on all Holders to the fullest extent permitted by applicable law. The Corporation shall provide a schedule of such calculations to any Holder upon written demand.

(b) Calculations Aggregated for Each Holder. The composition of the Conversion Consideration due upon conversion of the Convertible Preferred Stock of any Holder shall be computed based on the total number of shares of Convertible Preferred Stock of such Holder (and at the election of such Holder, its Affiliates) being converted with the same Conversion Date. For these purposes, unless otherwise provided in this Certificate of Designation, any cash amounts due to such Holder in respect thereof shall be rounded to the nearest cent.

Section 17. **Notices**. All notices and other communications pursuant to this Certificate of Designation shall be in writing and delivered personally, by facsimile or e-mail (with confirmation of receipt requested from the recipient, in the case of e--mail), or sent by a nationally recognized overnight courier service guaranteeing next day delivery, and (i) if to any Holder, to such Holder's address shown on the Register, and (ii) if to the Corporation, to its principal executive offices and to the e-mail address designated by the Corporation by notice to the Holders as of the date hereof (as may be amended from time to time by notice to the Holders in accordance with this Section 17). Unless otherwise specified herein, all notices and communications hereunder shall be deemed to have been given upon the earlier of receipt thereof or three (3) Business Days after the mailing thereof if sent by registered or certified mail with postage prepaid, or by private courier service.

Section 18. **Facts Ascertainable**. When the terms of this Certificate of Designation refer to a specific agreement or other document to determine the meaning or operation of a provision hereof, the Corporation shall maintain a copy of such agreement or document at the principal executive offices of the Corporation and a copy thereof shall be provided free of charge to any Holder who makes a written demand therefor. The Corporation shall also maintain a written record of the Initial Issue Date, the number of shares of Convertible Preferred Stock issued to a Holder and the date of each such issuance, and shall furnish such written record free of charge to any Holder who makes a written demand therefor.

Section 19. **Waiver**. The powers (including voting powers), if any, of the Convertible Preferred Stock and the preferences and relative, participating, optional, special or other rights, if any, and the qualifications, limitations or restrictions, if any, of the Convertible Preferred Stock may be waived as to all shares of Convertible Preferred Stock in any instance (without the necessity of calling, noticing or holding a meeting of stockholders) by the written consent or agreement of the Requisite Holders, consenting or agreeing separately as a single class.

Section 20. **Severability**. If any term of the Convertible Preferred Stock set forth herein is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other terms set forth herein which can be given effect without the invalid, unlawful or unenforceable term shall, nevertheless and to the fullest extent permitted by applicable law, remain in full force and effect, and no term herein set forth shall be deemed dependent upon any other such term unless so expressed herein.

Section 21. **No Other Rights**. The Convertible Preferred Stock shall have no powers (including voting powers), if any, or preferences and relative, participating, optional, special or other rights, if any, or qualifications, limitations or restrictions, if any, except as provided in this Certificate of Designation or the Certificate of Incorporation or as required by applicable law.

[*The Remainder of This Page Intentionally Left Blank; Signature Page Follows*]

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designation to be duly executed on this 20th day of November, 2026.

HIGHPEAK ENERGY, INC.

By: /s/ Michael Hollis
Name: Michael Hollis
Title: President and CEO

[Signature Page to Certificate of Designation]

EXHIBIT A

FORM OF PREFERRED STOCK CERTIFICATE

[*Insert Restricted Stock Legend, if applicable*]

HighPeak Energy, Inc.

Series A Convertible Preferred Stock

Certificate No. [_____]

HighPeak Energy, Inc., a Delaware corporation (the "Corporation"), certifies that [_] is the registered owner of [_] shares of the Corporation's Series A Convertible Preferred Stock, par value $0.0001 per share (the "Convertible Preferred Stock") evidenced by this certificate (this "Certificate"). The powers (including voting powers), if any, or preferences and relative, participating, optional, special or other rights, if any, or qualifications, limitations or restrictions, if any, are set forth in the Certificate of Designation of the Corporation establishing the Convertible Preferred Stock (as the same may be amended or amended and restated, the "Certificate of Designation"). Capitalized terms used in this Certificate without definition have the respective meanings ascribed to them in the Certificate of Designation.

Additional terms of this Certificate are set forth on the other side of this Certificate.

[*The Remainder of This Page Intentionally Left Blank; Signature Page Follows*]

IN WITNESS WHEREOF, HighPeak Energy, Inc. has caused this instrument to be duly executed as of the date set forth below.

HIGHPEAK ENERGY, INC.

Date: _____ By: _____
Name:
Title:

Date: _____ By: _____
Name:
Title:

TRANSFER AGENT'S COUNTERSIGNATURE

Continental Stock Transfer & Trust Company, as Transfer Agent, certifies that this Certificate evidences shares of Convertible Preferred Stock referred to in the within-mentioned Certificate of Designation.

Date: _____ By: _____
Authorized Signatory

HIGHPEAK ENERGY, INC.

Series A Convertible Preferred Stock

This Certificate evidences duly authorized, issued and outstanding shares of Convertible Preferred Stock. Notwithstanding anything to the contrary in this Certificate, to the extent that any provision of this Certificate conflicts with the provisions of the Certificate of Designation or the Certificate of Incorporation, the provisions of the Certificate of Designation or the Certificate of Incorporation, as applicable, will control.

1. **Countersignature**. This Certificate shall not be valid until countersigned by the Transfer Agent.

2. Abbreviations. Customary abbreviations may be used in the name of a Holder or its assignee, such as TEN COM (tenants in common), TENENT (tenants by the entireties), JT TEN (joint tenants with right of survivorship and not as tenants in common), CUST (custodian), and U/G/M/A (Uniform Gift to Minors Act).

* * *

To request a copy of the Certificate of Designation, which the Corporation shall provide to any Holder at no charge, please send a written demand to the following address:

HighPeak Energy, Inc.
421 W. 3rd St., Suite 1000
Fort Worth, Texas 76102

OPTIONAL CONVERSION NOTICE

HighPeak Energy, Inc.

Series A Convertible Preferred Stock

Subject to the terms of the Certificate of Designation, by executing and delivering this Optional Conversion Notice, the undersigned Holder of the Convertible Preferred Stock identified below directs the Corporation to convert (check one):

☐ all of the shares of Convertible Preferred Stock

☐ _____* shares of Convertible Preferred Stock

evidenced by Certificate No. _____.

Date: _____ _____
(Legal Name of Holder)

By: _____
Name:
Title:

CHANGE OF CONTROL REPURCHASE NOTICE

HighPeak Energy, Inc.

Series A Convertible Preferred Stock

Subject to the terms of the Certificate of Designation, by executing and delivering this Change of Control Repurchase Notice, the undersigned Holder of the Convertible Preferred Stock identified below is exercising its Change of Control Repurchase Right with respect to (check one):

☐ all of the shares of Convertible Preferred Stock

☐ _____ shares of Convertible Preferred Stock

evidenced by Certificate No. _____.

The undersigned acknowledges that the Certificate identified above, duly endorsed for transfer, must be delivered to the Paying Agent before the Change of Control Repurchase Price will be paid.

Date: _____ _____
(Legal Name of Holder)

By: _____
Name:
Title:

ASSIGNMENT FORM

HighPeak Energy, Inc.

Series A Convertible Preferred Stock

Subject to the terms of the Certificate of Designation, the undersigned Holder of the within Convertible Preferred Stock assigns to:

Name: _____

Address: _____

Social security or tax identification number: _____

the within Convertible Preferred Stock and all rights thereunder irrevocably appoints:

as agent to transfer the within Convertible Preferred Stock on the books of the Corporation. The agent may substitute another to act for him/her.

Date: _____ _____
(Legal Name of Holder)

By: _____
Name:
Title:

EXHIBIT B

FORM OF RESTRICTED STOCK LEGEND

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY STATE SECURITIES LAWS. THESE SECURITIES MAY NOT BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION.

FORM OF TRANSFER RESTRICTIONS LEGEND

THE SECURITIES REPRESENTED HEREBY ARE SUBJECT TO RESTRICTIONS ON TRANSFER PURSUANT TO SECTION 4.2(A) AND SECTION 4.2(B) OF THE CERTAIN SECURITIES PURCHASE AGREEMENTS, DATED AS OF OCTOBER 6, 2026, BY AND AMONG THE CORPORATION AND THE PURCHASERS THERETO GOVERNING THE INITIAL ISSUANCE OF THE SERIES A CONVERTIBLE PREFERRED STOCK OF THE CORPORATION.

Exhibit 4.1

FORM OF PREFERRED STOCK CERTIFICATE

[*Insert Restricted Stock Legend, if applicable*]

HighPeak Energy, Inc.

Series A Convertible Preferred Stock

Certificate No. [_____]

HighPeak Energy, Inc., a Delaware corporation (the "Corporation"), certifies that [__] is the registered owner of [__] shares of the Corporation's Series A Convertible Preferred Stock, par value $0.0001 per share (the "Convertible Preferred Stock") evidenced by this certificate (this "Certificate"). The powers (including voting powers), if any, or preferences and relative, participating, optional, special or other rights, if any, or qualifications, limitations or restrictions, if any, are set forth in the Certificate of Designation of the Corporation establishing the Convertible Preferred Stock (as the same may be amended or amended and restated, the "Certificate of Designation"). Capitalized terms used in this Certificate without definition have the respective meanings ascribed to them in the Certificate of Designation.

Additional terms of this Certificate are set forth on the other side of this Certificate.

[*The Remainder of This Page Intentionally Left Blank; Signature Page Follows*]

IN WITNESS WHEREOF, HighPeak Energy, Inc. has caused this instrument to be duly executed as of the date set forth below.

HIGHPEAK ENERGY, INC.

Date: _____ By: _____
Name:
Title:

Date: _____ By: _____
Name:
Title:

TRANSFER AGENT'S COUNTERSIGNATURE

Continental Stock Transfer & Trust Company, as Transfer Agent, certifies that this Certificate evidences shares of Convertible Preferred Stock referred to in the within-mentioned Certificate of Designation.

Date: _____ By: _____

Authorized Signatory

HIGHPEAK ENERGY, INC.

Series A Convertible Preferred Stock

This Certificate evidences duly authorized, issued and outstanding shares of Convertible Preferred Stock. Notwithstanding anything to the contrary in this Certificate, to the extent that any provision of this Certificate conflicts with the provisions of the Certificate of Designation or the Certificate of Incorporation, the provisions of the Certificate of Designation or the Certificate of Incorporation, as applicable, will control.

1. **Countersignature**. This Certificate shall not be valid until countersigned by the Transfer Agent.

2. **Abbreviations**. Customary abbreviations may be used in the name of a Holder or its assignee, such as TEN COM (tenants in common), TENENT (tenants by the entireties), JT TEN (joint tenants with right of survivorship and not as tenants in common), CUST (custodian), and U/G/M/A (Uniform Gift to Minors Act).

* * *

To request a copy of the Certificate of Designation, which the Corporation shall provide to any Holder at no charge, please send a written demand to the following address:

HighPeak Energy, Inc.
421 W. 3rd St., Suite 1000
Fort Worth, Texas 76102

OPTIONAL CONVERSION NOTICE

HighPeak Energy, Inc.

Series A Convertible Preferred Stock

Subject to the terms of the Certificate of Designation, by executing and delivering this Optional Conversion Notice, the undersigned Holder of the Convertible Preferred Stock identified below directs the Corporation to convert (check one):

☐ all of the shares of Convertible Preferred Stock

☐ _____ * shares of Convertible Preferred Stock

evidenced by Certificate No. _____

Date: _____ By: _____
(Legal Name of Holder)

By: _____
Name:
Title:

CHANGE OF CONTROL REPURCHASE NOTICE

HighPeak Energy, Inc.

Series A Convertible Preferred Stock

Subject to the terms of the Certificate of Designation, by executing and delivering this Change of Control Repurchase Notice, the undersigned Holder of the Convertible Preferred Stock identified below is exercising its Change of Control Repurchase Right with respect to (check one):

☐ all of the shares of Convertible Preferred Stock

☐ shares of Convertible Preferred Stock

evidenced by Certificate No. _____

The undersigned acknowledges that the Certificate identified above, duly endorsed for transfer, must be delivered to the Paying Agent before the Change of Control Repurchase Price will be paid. Date:

Date: _____ By: _____
(Legal Name of Holder)

By: _____
Name:
Title:

ASSIGNMENT FORM

HighPeak Energy, Inc.

Series A Convertible Preferred Stock

Subject to the terms of the Certificate of Designation, the undersigned Holder of the within Convertible Preferred Stock assigns to:

Name: _____

Address: _____

Social security or tax identification number: _____

the within Convertible Preferred Stock and all rights thereunder irrevocably appoints:

as agent to transfer the within Convertible Preferred Stock on the books of the Corporation. The agent may substitute another to act for him/her.

Date: _____ By: _____
(Legal Name of Holder)

By: _____
Name:
Title:

Exhibit 10.1

REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (this "**Agreement**") is dated as of November 20, 2026 (the "**Effective Date**"), by and among HighPeak Energy, Inc., a Delaware corporation (the "**Company**"), and each party listed under the heading "**Holders**" on the signature pages attached hereto (collectively, the "**Holders**," and each individually, a "**Holder**").

RECITALS

WHEREAS, the Holders have agreed to purchase from the Company, and the Company has agreed to issue and sell to each Holder, the number of shares of the Company's Series A Convertible Preferred Stock, par value $0.0001 per share (the "**Series A Preferred Stock**") set forth opposite such Holder's name on Schedule I to the Securities Purchase Agreement, dated as of October 6, 2026, by and among the Company and each party designated as a Purchaser on the signature pages thereto (the "**Securities Purchase Agreement**"); and

WHEREAS, pursuant to Section 5.1(e) of the Securities Purchase Agreement, the Holders have the right to enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1. Definitions.

As used in this Agreement, the following terms shall have the meanings indicated:

"**Affiliate**" shall mean, with respect to any person, any other person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, another person. The term "**control**" and its derivatives with respect to any person mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting securities, by contract or otherwise. For the purposes of this Agreement, the Company and its subsidiaries shall not be deemed to be Affiliates of the Holders or any of their respective Affiliates.

"**Agreement**" has the meaning set forth in the Preamble.

"**Block Trade**" has the meaning set forth in Section 2.4.

"**Block Trade Notice**" has the meaning set forth in Section 2.4.

"**Block Trade Offer Notice**" has the meaning set forth in Section 2.4.

"**Business Day**" is any Monday, Tuesday, Wednesday, Thursday or Friday other than a day on which banks and other financial institutions are authorized or required to be closed for business in the State of New York.

"**Common Stock**" means the Company's common stock, par value $0.0001 per share.

"**Company**" has the meaning set forth in the Preamble.

"**Demanding Holder**" or "**Demanding Holders**" has the meaning set forth in Section 2.1.

"**Demand Registration Notice**" has the meaning set forth in Section 2.1.

"**Demand Registration Statement**" has the meaning set forth in Section 2.1.

"**$**" means United States dollars.

"**Effective Date**" has the meaning set forth in the Preamble.

"**Existing RRA**" means that certain Registration Rights Agreement, dated as of August 21, 2020, by and among the Company and the signatories thereto.

"**Existing RRA Consent**" means the consent of the Existing RRA Other Holder to parity treatment of Purchaser with respect to cutback rights across the Existing RRA and this Agreement.

"**Existing RRA Holders**" means the Existing RRA HPK Holders, the John Paul DeJoria Family Trust and the Existing RRA Other Holder.

"**Existing RRA HPK Holders**" means HighPeak Pure Acquisition, LLC, HighPeak Energy, LP and HighPeak Energy II, LP.

"**Existing RRA Other Holder**" means Jack Hightower; *provided*, that following receipt of an Existing RRA Consent with respect to such Person, such person shall no longer be deemed an Existing RRA Other Holder and instead shall be deemed to be a "**Consenting Holder**".

"**FINRA**" means the Financial Industry Regulatory Authority.

"**General Disclosure Package**" has the meaning set forth in Section 7.1(a).

"**Holder**" or "**Holders**" has the meaning set forth in the Preamble. For the avoidance of doubt, a person or entity that becomes a party to this Agreement after the date hereof pursuant to Section 11.6 shall thereupon become a "**Holder**."

"**Indemnified Party**" has the meaning set forth in Section 7.3.

"**Indemnifying Party**" has the meaning set forth in Section 7.3.

"**Initiating Holder**" has the meaning set forth in Section 3.2.

"**Lock-Up Agreement**" has the meaning set forth in Section 6.5.

"**Maximum Number of Securities**" has the meaning set forth in Section 2.2(e).

"**Offer Notice**" has the meaning set forth in Section 2.1.

"**Opt-Out Notice**" has the meaning set forth in Section 4.2.

"**Parity Holders**" means the Existing RRA HPK Holders, the John Paul DeJoria Family Trust and any Consenting Holders and (i) for the purposes of Section 2.1, the Demanding Holders, (ii) for purposes of Section 2.2, the Takedown Holders or (iii) for purposes of Section 3.3, the Holders exercising their rights pursuant to Section 3.3.

"**Permitted Transferee**" of a Holder shall mean any person in which the Holder owns a majority of the equity interests or any other investment entity that is controlled, advised or managed by the same person or persons that control the Holder or is an Affiliate of such person.

"**Piggyback Registration Statement**" has the meaning set forth in Section 3.1.

"**Piggyback Underwritten Offering**" has the meaning set forth in Section 3.1.

"**Registrable Securities**" shall mean, with respect to any Holder, the Securities held by such Holder in the Company or any successor to the Company, excluding any such Securities that have been disposed of pursuant to any offering or sale in accordance with a Registration Statement, or have been sold pursuant to Rule 144 or Rule 145 (or any successor provisions) under the Securities Act or in any other transaction in which the purchaser does not receive "restricted securities" (as that term is defined for purposes of Rule 144), have been transferred to a transferee that has not agreed in writing and for the benefit of the Company to be bound by the terms and conditions of this Agreement, or have ceased to be of a class of securities of the Company that is listed and traded on a recognized national securities exchange or automated quotation system. Notwithstanding the foregoing, with respect to any Holder, such Holder's Securities shall not constitute Registrable Securities if all of such Holder's Securities (together with any Securities held by Affiliates of such Holder) are eligible for immediate sale in a single transaction pursuant to Rule 144 (or any successor provision) with no volume or other restrictions or limitations under Rule 144 (or any such successor provision). Notwithstanding the foregoing, when used with respect to any Existing RRA Holder (in its capacity as such), the term Registrable Securities shall have the meaning assigned thereto in the Existing RRA.

"**Registration Expenses**" shall mean all expenses incurred in connection with the preparation, printing and distribution of any Registration Statement and Prospectus and all amendments and supplements thereto, and any and all expenses incident to the performance by the Company of its registration obligations pursuant to this Agreement, including: all registration, qualification and filing fees; all fees and expenses associated with a required listing of the Registrable Securities on any securities exchange or market; fees and expenses with respect to filings required to be made with the Nasdaq Global Market (or such other securities exchange or market on which the Shares are then listed or quoted) or FINRA; fees and expenses of compliance with securities or "blue sky" laws; fees and expenses related to registration in any non-U.S. jurisdictions, as applicable; fees and disbursements of counsel for the Company and fees and expenses for independent certified public accountants retained by the Company (including the expenses of any comfort letters, costs associated with the delivery by independent certified public accountants of a comfort letter or comfort letters, and expenses of any special audits incident to or required by any such registration); all internal expenses of the Company (including all salaries and expenses of its officers and employees performing legal or accounting duties); the fees and expenses of any person, including special experts, retained by the Company in connection with the preparation of any Registration Statement; printer, messenger, telephone and delivery expenses; and the reasonable fees and disbursements of one special legal counsel to represent all of the Holders participating in any such registration.

"**Registration Statement**" and "**Prospectus**" refer, as applicable, to the Demand Registration Statement and related prospectus (including any preliminary prospectus) or the Piggyback Registration Statement and related prospectus (including any preliminary prospectus), whichever is utilized by the Company to satisfy Holders' registration rights pursuant to this Agreement, including, in each case, any documents incorporated therein by reference.

"**RRA Consent**" means the consent of the Existing RRA Other Holder to parity treatment of Purchaser with respect to cutback rights across the Existing RRA and this Agreement.

"**Rule 144**" shall mean Rule 144 of the rules and regulations promulgated under the Securities Act.

"**Rule 145**" shall mean Rule 145 of the rules and regulations promulgated under the Securities Act.

"**S-3 Registration**" has the meaning set forth in Section 2.2(b).

"**SEC**" shall mean the United States Securities and Exchange Commission.

"**Securities**" shall mean the Shares held by any Holder, including any securities issued or issuable with respect to such Securities by way of distribution, exercise or settlement, or in connection with any reorganization or other recapitalization, merger, consolidation or otherwise.

"**Securities Act**" shall mean the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"**Securities Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"**Securities Purchase Agreement**" shall have the meaning set forth in the recitals to this Agreement.

"**Series A Preferred Stock**" has the meaning set forth in the recitals to this Agreement.

"**Shares**" means shares of the Company's Common Stock (including Shares acquired on or after the Effective Date or issuable upon the exercise, settlement, conversion, exchange or redemption of any other security (including the Series A Preferred Stock) therefor).

"**Shelf Registration**" has the meaning set forth in Section 2.2(a).

"**Suspension Event**" has the meaning set forth in Section 5.1.

"**Takedown Holder**" has the meaning set forth in Section 2.2(c).

"**Takedown Offer Notice**" has the meaning set forth in Section 2.2(d).

"**Takedown Request Notice**" has the meaning set forth in Section 2.2(d).

"**Transfer**" shall mean the sale of, offer to sell, contract or agreement to sell, hypothecate, pledge, encumber, grant of any option to purchase or otherwise dispose of or agreement to dispose of, directly or indirectly (including through the transfer of the equity interests in any person), or establishment or increase of a put equivalent position or liquidation with respect to or decrease of a call equivalent position within the meaning of Section 16 of the Securities Exchange Act with respect to, any security, entry into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any security, whether any such transfer is to be settled by delivery of such securities, in cash or otherwise, or public announcement of any intention to effect any such transaction; and "**Transferred**" and "**Transferee**" shall each have a correlative meaning.

"**Underwritten Shelf Takedown**" has the meaning set forth in Section 2.2(c).

Section 2. Demand Registration Rights.

2.1. Demand Rights.

(a) At any time, and from time to time, any Holder (each, a "**Demanding Holder**") may deliver to the Company a written notice (a "**Demand Registration Notice**") informing the Company of its desire to have some or all of its Registrable Securities registered for sale; *provided* that such Demand Registration Notice covers not less than $25 million of Registrable Securities, as determined by reference to the volume weighted average price for such Registrable Securities on the Nasdaq Global Market (or such other securities exchange or market on which the Shares are then listed or quoted) for the five (5) trading days immediately preceding the applicable determination date or all Registrable Securities held by such Demanding Holder. Upon receipt of the Demand Registration Notice, if the Company has not already caused the Registrable Securities to be registered on a Shelf Registration that the Company then has on file with, and has been declared effective by, the SEC which remains in effect and not subject to any stop order, injunction or other order or requirement of the SEC (in which event the Company shall be deemed to have satisfied its registration obligation under this Section 2.1), then the Company will use its reasonable best efforts to cause to be filed with the SEC as soon as reasonably practicable after receiving the Demand Registration Notice, but in no event more than forty-five (45) calendar days (or thirty (30) calendar days in the case of an S-3 Registration pursuant to Section 2.2(b)) following receipt of such notice, a registration statement and related prospectus that complies as to form and substance in all material respects with applicable SEC rules providing for the sale by such Demanding Holder or group of Demanding Holders, and any other Holders that elect to register their Registrable Securities as provided below, of all of the Registrable Securities requested to be registered by such Holders (the "**Demand Registration Statement**"), and agrees (subject to Sections 5.1 and 6.2 hereof) to use commercially reasonable efforts to cause the Demand Registration Statement to be declared effective by the SEC, upon, or as soon as practicable following, the filing thereof. The Company shall give written notice of the proposed filing of the Demand Registration Statement to all Holders holding Registrable Securities as soon as practicable (but in no event less than five (5) calendar days before the anticipated filing date), and such notice shall offer such Holders the opportunity to participate in such Demand Registration Statement (the "**Offer Notice**") and to register such number of Registrable Securities as each such Holder may request. Holders who wish to include their Registrable Securities in the Demand Registration Statement must notify the Company in writing within three (3) calendar days of receiving the Offer Notice and include in such written notice the information requested by the Company in the Offer Notice. Subject to Section 5.1 hereof, the Company agrees to use commercially reasonable efforts to keep the Demand Registration Statement continuously effective (including the preparation and filing of any amendments and supplements necessary for that purpose) until the earlier of the date on which all of the Securities held by the Holders that are registered for resale under the Demand Registration Statement are no longer Registrable Securities, and the date on which the Holders consummate the sale of all of the Registrable Securities registered for resale under the Demand Registration Statement. Notwithstanding the foregoing, the Company is not obligated to take any action upon receipt of a Demand Registration Notice delivered within ninety (90) days of a prior Demand Registration Notice.

(b) If a Demanding Holder intends to distribute the Registrable Securities covered by the Demand Registration Notice by means of an underwritten offering, it shall so advise the Company as a part of the Demand Registration Notice. Notwithstanding any other provision of this Section 2.1, if the underwriter advises the Company that in the opinion of such underwriter, the distribution of all of the Registrable Securities requested to be registered would materially and adversely affect the distribution of all of the securities to be underwritten, then the Company shall deliver to the registering Holders a copy of such underwriter's opinion, which opinion shall be in writing and shall state the reasons for such opinion, and the number of Registrable Securities that may be included in such registration shall be allocated:

(i) first, to the Existing RRA Other Holder electing to register their Registrable Securities;

(ii) second, to the Parity Holders electing to register their Registrable Securities, on a pro rata basis based on the relative number of Registrable Securities then held by each such Parity Holder; *provided* that any such amount thereby allocated to each such Parity Holder that exceeds such Parity Holder's request shall be reallocated among the other Parity Holders in like manner, as applicable;

(iii) third, to the other Holders electing to register their Registrable Securities, on a pro rata basis based on the relative number of Registrable Securities then held by each such Holder; *provided* that any such amount thereby allocated to each such other Holder that exceeds such other Holder's request shall be reallocated among such other Holders in like manner, as applicable; and

(iv) fourth, to the other persons proposing to register securities in such registration, if any; *provided*, *however*, that the number of Registrable Securities to be included in such underwriting shall not be reduced unless all other securities are entirely excluded from such underwriting. Any Registrable Securities excluded or withdrawn from such underwritten offering shall be withdrawn from the registration.

2.2. Shelf Registration.

(a) A Demanding Holder shall be permitted to request that any registration under this Section 2 be made on a form of registration permitting the offer and sale of Registrable Securities under Rule 415 under the Securities Act (such registration, a "**Shelf Registration**"). The Company shall use its commercially reasonable efforts to effect such Shelf Registration and to keep it continuously effective until such date on which the Shares covered by such Shelf Registration are no longer Registrable Securities. During the period that the Shelf Registration is effective, the Company shall supplement or make amendments to the Shelf Registration, if required by the Securities Act or if reasonably requested by a Demanding Holder or an underwriter of Registrable Securities to be sold pursuant thereto, including to reflect any specific plan of distribution or method of sale, and shall use its reasonable best efforts to have such supplements and amendments declared effective, if required, as soon as practicable after filing.

(b) With respect to a Demand Registration Notice to be delivered at any time at which the Company is eligible to file a registration statement filed under the Securities Act on Form S-3 or such similar or successor form as may be appropriate (an "**S-3 Registration**"), a Demanding Holder may include in the Demand Registration Notice a request that the Company effect an S-3 Registration. In such event, the Company shall be required to effect an S-3 Registration in accordance with the terms hereof, unless at the time of the request Form S-3 or such similar or successor form is not available to the Company for such offering.

(c) At any time and from time to time after the effectiveness of a Shelf Registration or S-3 Registration, any Holder with Registrable Securities included on such Shelf Registration or S-3 Registration (a "**Takedown Holder**") may request to sell all or any portion of its Registrable Securities included thereon in an underwritten offering that is registered pursuant to such Shelf Registration or S-3 Registration (an "**Underwritten Shelf Takedown**"); *provided* that in the case of an Underwritten Shelf Takedown such Takedown Holder(s) will be entitled to make such request only if the total offering price of the Securities to be sold in such offering (before deduction of underwriting discounts) is reasonably expected to exceed, in the aggregate, $25 million. Notwithstanding the foregoing, the Company is not obligated to effect an Underwritten Shelf Takedown within ninety (90) days after the closing of an Underwritten Shelf Takedown.

(d) Any requests for an Underwritten Shelf Takedown shall be made by giving written notice to the Company (a "**Takedown Request Notice**"). The Takedown Request Notice shall specify the approximate number of Registrable Securities to be sold in the Underwritten Shelf Takedown. Within five (5) days after receipt of any Takedown Request Notice, the Company shall give written notice of the requested Underwritten Shelf Takedown (the "**Takedown Offer Notice**") to all other Holders and, subject to the provisions of Section 2.2(e) hereof, shall include in the Underwritten Shelf Takedown all Registrable Securities with respect to which the Company has received written requests for inclusion therein within three (3) days after sending the Takedown Offer Notice.

(e) Notwithstanding any other provision of this Section 2.2, if the underwriter advises the Company that in the opinion of such underwriter, the dollar amount or number of Registrable Securities that any such Holders desire to sell, taken together with all other securities that the Company desires to sell as to which an Underwritten Shelf Takedown has been requested pursuant to separate written contractual piggy-back registration rights held by any other stockholders who desire to sell, exceeds the maximum dollar amount or maximum number of equity securities that can be sold in such Underwritten Shelf Takedown without materially and adversely affecting the proposed offering price, the timing, the distribution method, or the probability of success of such offering (such maximum dollar amount or maximum number of such securities, as applicable, the "**Maximum Number of Securities**"), then the Company shall include in such Underwritten Shelf Takedown, as follows:

(i) first, the Registrable Securities of the Existing RRA Other Holder, that can be sold without exceeding the Maximum Number of Securities;

(ii) second, the Registrable Securities of the Parity Holders (pro rata based on the respective number of Registrable Securities that each such Parity Holder has requested be included in such Underwritten Shelf Takedown and the aggregate number of Registrable Securities that the Parity Holders have requested be included in such Underwritten Shelf Takedown), that can be sold without exceeding the Maximum Number of Securities;

(iii) third, to the extent that the Maximum Number of Securities has not been reached under the foregoing clause (i) and clause (ii), the Registrable Securities of other Holders exercising their rights to include their Registrable Securities pursuant to Section 2.2(d) (pro rata based on the respective number of Registrable Securities that each other Holder has requested be included in such Underwritten Shelf Takedown and the aggregate number of Registrable Securities that the other Holders have requested be included in such Underwritten Shelf Takedown), that can be sold without exceeding the Maximum Number of Securities; and

(iv) fourth, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (i), (ii) and (iii), the securities that the Company desires to sell that can be sold without exceeding the Maximum Number of Securities.

2.3. Selection of Underwriter. The Company shall have the right to select the underwriter or underwriters to administer any underwritten demand registration offering or Underwritten Shelf Takedown under a Demand Registration Statement, including any Shelf Registration or S-3 Registration; *provided* that such underwriter or underwriters shall be reasonably acceptable to the Demanding Holder or Takedown Holder as applicable; *provided, further*, that any nationally recognized "bulge bracket" investment banking firm shall be deemed to be acceptable to the Demanding Holder or Takedown Holder as applicable.

2.4. **Block Trades**. Notwithstanding anything contained in this Section 2, in the event of a sale of Registrable Securities in an underwritten transaction requiring the involvement of the Company but not involving any "road show" or a lock-up agreement of more than sixty (60) days to which the Company is a party, and which is commonly known as a "block trade" (a "**Block Trade**"), the Demanding Holder or Takedown Holder, as applicable, shall give at least five (5) Business Days prior notice in writing (the "**Block Trade Notice**") of such transaction to the Company; the Company shall identify the potential underwriter(s) and cooperate with such requesting Holder or Holders to the extent it is reasonably able to effect such Block Trade. The Company shall give written notice (the "**Block Trade Offer Notice**") of the proposed Block Trade to all Holders holding Registrable Securities as soon as practicable (but in no event more than two (2) Business Days following the Company's receipt of the Block Trade Notice), and such notice shall offer such Holders the opportunity to participate in such Block Trade by providing written notice of intent to so participate within two (2) Business Days following receipt of the Block Trade Offer Notice. Any Block Trade shall be for at least $15 million in expected gross proceeds. The Company shall not be required to effectuate more than two (2) Block Trades in any 90-day period. For the avoidance of doubt, a Block Trade shall not constitute an Underwritten Shelf Takedown. The Company shall select the underwriter(s) to administer any Block Trade: *provided* that such underwriter(s) shall be reasonably acceptable to the Holders of at least a majority of the Registrable Securities being sold in any applicable Block Trade: *provided, further*, that any nationally recognized "bulge bracket" investment banking firm shall be deemed to be acceptable to such Holders.

Section 3. **Incidental or "Piggy-Back" Registration**.

3.1. **Piggy-Back Rights**. If the Company proposes to file a Registration Statement under the Securities Act with respect to an offering of its Shares, whether to be sold by the Company or by one or more selling security holders, other than a Demand Registration Statement (in which case the ability of a Holder to participate in such Demand Registration Statement shall be governed by Section 2) or a registration statement on Form S-8 or any successor form to Form S-8 or in connection with any employee or director welfare, benefit or compensation plan, in connection with an exchange offer or an offering of securities exclusively to existing security holders of the Company or its subsidiaries or relating to a transaction pursuant to Rule 145 under the Securities Act, the Company shall give written notice of the proposed registration to all Holders holding Registrable Securities at least five (5) calendar days prior to the filing of the Registration Statement. Each Holder holding Registrable Securities shall have the right to request that all or any part of its Registrable Securities be included in the Registration Statement by giving written notice to the Company within three (3) calendar days after receipt of the foregoing notice by the Company, *provided* that such Holder elects to include its Registrable Securities in the Registration Statement in an amount not less than $10 million. Subject to the provisions of Sections 3.2, 3.3 and 6.2, the Company will include all such Registrable Securities requested to be included by the Holders in the Piggyback Registration Statement. For purposes of this Agreement, any registration statement of the Company in which Registrable Securities are included pursuant to this Section 3 shall be referred to as a "**Piggyback Registration Statement**," and any such Underwritten Shelf Takedown, a "**Piggyback Underwritten Offering**."

3.2. **Withdrawal of Exercise of Rights**. If, at any time after giving written notice of its intention to register any securities and prior to the effective date of the Piggyback Registration Statement filed in connection with such registration, the Company or any other holder of securities that initiated such registration (an "**Initiating Holder**") shall determine for any reason not to proceed with the proposed registration, the Company may at its election (or the election of such Initiating Holder(s), as applicable) give written notice of such determination to the Holders and thereupon shall be relieved of its obligation to register any Registrable Securities in connection with such registration (but not from its obligation to pay the Registration Expenses incurred in connection therewith).

3.3. Underwritten Offering. If a registration pursuant to this Section 3 involves an underwritten offering and the managing underwriter advises the Company in writing that, in its opinion, the number of securities which the Company and the holders of the Registrable Securities and any other persons intend to include in such registration exceeds the Maximum Number of Securities, then the number of such securities to be included in such registration shall be reduced to such extent, and the Company will include in such registration such Maximum Number of Securities as follows:

(a) If the Piggyback Underwritten Offering is undertaken for the Company's account, the Company shall include in any such Piggyback Underwritten Offering:

(i) first, the securities that the Company desires to sell, which can be sold without exceeding the Maximum Number of Securities;

(ii) second, to the extent that the Maximum Number of Securities has not been reached under the foregoing clause (i), the Registrable Securities of Existing RRA Other Holder exercising their rights to include their Registrable Securities pursuant to the Existing RRA, which can be sold without exceeding the Maximum Number of Securities;

(iii) third, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (i) and (ii), the Registrable Securities of Parity Holders exercising their rights to include their Registrable Securities pursuant to Section 3.1 or the Existing RRA, as applicable (pro rata based on the respective number of Registrable Securities that each Parity Holder has requested be included in such Piggyback Underwritten Offering and the aggregate number of Registrable Securities that the Parity Holders have requested be included in such Piggyback Underwritten Offering), which can be sold without exceeding the Maximum Number of Securities; and

(iv) fourth, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (i), (ii) and (iii), the Registrable Securities of other Holders exercising their rights to include their Registrable Securities pursuant to Section 3.1 as to which participation has been requested pursuant to written contractual piggy-back registration rights of other stockholders (pro rata based on the respective number of Registrable Securities that each other Holder or other stockholder of the Company has requested be included in such Piggyback Underwritten Offering and the aggregate number of Registrable Securities that the other Holders and other stockholders of the Company have requested be included in such Piggyback Underwritten Offering), which can be sold without exceeding the Maximum Number of Securities.

(b) If the Piggyback Underwritten Offering is pursuant to a request by persons or entities other than the Holders of Registrable Securities, including an Existing RRA Holder, then the Company shall include in any such Piggyback Underwritten Offering:

(i) first, the Registrable Securities, if any, of the Existing RRA Other Holder, that can be sold without exceeding the Maximum Number of Securities;

(ii) second, the Registrable Securities, if any, of the Parity Holders, (pro rata based on the respective number of Registrable Securities that each Parity Holder of the Company has requested be included in such Piggyback Underwritten Offering and the aggregate number of Registrable Securities that the Parity Holders have requested be included in such Piggyback Underwritten Offering) that can be sold without exceeding the Maximum Number of Securities;

(iii) third, the Registrable Securities of other Holders exercising their rights to include their Registrable Securities pursuant to Section 3.1 or as to which participation has been requested pursuant to written contractual piggy-back registration rights of other stockholders (pro rata based on the respective number of Registrable Securities that each other Holder or other stockholder of the Company has requested be included in such Piggyback Underwritten Offering and the aggregate number of Registrable Securities that the other Holders and other stockholders of the Company have requested be included in such Piggyback Underwritten Offering), that can be sold without exceeding the Maximum Number of Securities; and

(iv) fourth, the securities that the Company desires to sell, which can be sold without exceeding the Maximum Number of Securities.]

3.4. Selection of Underwriter. Except to the extent Section 2.3 applies, Registrable Securities proposed to be registered and sold under this Section 3 pursuant to an underwritten offering for the account of the Holders holding Registrable Securities shall be sold to prospective underwriters selected by the Company, *provided* that such underwriter or underwriters shall be reasonably acceptable to the Holders participating in such offering, and on the terms and subject to the conditions of one or more underwriting agreements negotiated between the Company, the Holders participating in such offering and any other Holders demanding registration and the prospective underwriters.

Section 4. Limitations on Registration Rights.

4.1. Limitations on Registration Rights. Each Holder, together with all Affiliates or Permitted Transferees of such Holder, shall be entitled, collectively, to continue to exercise the registration rights under Section 2 and Section 3 of this Agreement until such Holder (and its Affiliates and Permitted Transferees) no longer holds Registrable Securities representing at least $5 million, as determined by reference to the volume weighted average price for such Registrable Securities on the Nasdaq Global Market (or such other securities exchange or market on which the Shares are then listed or quoted) for the five (5) trading days immediately preceding the applicable determination date, and each such exercise of a registration right under this Agreement shall be with respect to a minimum of $5 million of the outstanding Registrable Securities of the Company (or all of the Registrable Securities of such Holder or Holders, if less than $5 million of the outstanding Registrable Securities of the Company are held by such Holder or Holders), as determined by reference to the volume weighted average price for such Registrable Securities on the Nasdaq Global Market (or such other securities exchange or market on which the Shares are then listed or quoted) for the five (5) trading days immediately preceding the applicable determination date.

4.2. **Opt-Out Notices**. Any Holder may deliver written notice (an "**Opt-Out Notice**") to the Company requesting that such Holder not receive notice from the Company of the proposed filing of any Demand Registration Statement pursuant to Section 2.1, the proposed filing of any Piggyback Registration Statement pursuant to Section 3.1, the withdrawal of any Piggyback Registration Statement pursuant to Section 3.2 or any Suspension Event pursuant to Section 5.1; *provided*, *however*, that such Holder may later revoke any such Opt-Out Notice in writing. Following receipt of an Opt-Out Notice from a Holder (unless subsequently revoked), the Company shall not deliver any such notice to such Holder pursuant to Sections 2.1, 3.1, 3.2 or 5.1, as applicable, and such Holder shall no longer be entitled to the rights associated with any such notice and each time prior to a Holder's intended use of an effective Registration Statement, such Holder will notify the Company in writing at least two (2) Business Days in advance of such intended use, and if a notice of a Suspension Event was previously delivered (or would have been delivered but for the provisions of this Section 4.2) and the related suspension period remains in effect, the Company will so notify such Holder, within one (1) Business Day of such Holder's notification to the Company, by delivering to such Holder a copy of such previous notice of Suspension Event, and thereafter will provide such Holder with the related notice of the conclusion of such Suspension Event immediately upon its availability.

Section 5. **Suspension of Offering**.

5.1. **Suspension of Offering**. Notwithstanding the provisions of Section 2 or Section 3, the Company shall be entitled to postpone the effectiveness of the Registration Statement, and from time to time to require Holders not to sell under the Registration Statement or to suspend the effectiveness thereof, if the negotiation or consummation of a transaction by the Company or its subsidiaries is pending or an event has occurred, which negotiation, consummation or event the Company's board of directors reasonably believes, upon the advice of legal counsel, would require additional disclosure by the Company in the Registration Statement of material information that the Company has a bona fide business purpose for keeping confidential and the non-disclosure of which in the Registration Statement would be expected, in the reasonable determination of the Company's board of directors, upon the advice of legal counsel, to cause the Registration Statement to fail to comply with applicable disclosure requirements (each such circumstance, a "**Suspension Event**"); *provided*, *however*, that the Company may not delay or suspend the Registration Statement on more than two occasions or for more than sixty (60) consecutive calendar days, or more than ninety (90) total calendar days, in each case during any twelve-month period. Upon receipt of any written notice from the Company of the happening of any Suspension Event during the period that the Registration Statement is effective or if as a result of a Suspension Event the Registration Statement or related Prospectus contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made (in the case of the Prospectus) not misleading, each Holder agrees that it will immediately discontinue offers and sales of the Registrable Securities under the Registration Statement until the Holder receives copies of a supplemental or amended Prospectus (which the Company agrees to promptly prepare) that corrects the misstatement(s) or omission(s) referred to above and receives notice that any post-effective amendment has become effective or unless otherwise notified by the Company that it may resume such offers and sales, and it will maintain the confidentiality of any information included in such written notice delivered by the Company in accordance with Section 10.1 unless otherwise required by law or subpoena. If so directed by the Company, each Holder will deliver to the Company or, in each such Holder's sole discretion destroy, all copies of the Prospectus covering the Registrable Securities in such Holder's possession.

Section 6. Registration Procedures.

6.1. Obligations of the Company. When the Company is required to effect the registration of Registrable Securities under the Securities Act pursuant to this Agreement, the Company shall use commercially reasonable efforts to:

(a) register or qualify the Registrable Securities by the time the applicable Registration Statement is declared effective by the SEC under all applicable state securities or "**blue sky**" laws of such jurisdictions as any Holder may reasonably request in writing, to keep each such registration or qualification effective during the period such Registration Statement is required to be kept effective pursuant to this Agreement, and to do any and all other similar acts and things which may be reasonably necessary or advisable to enable the Holders to consummate the disposition of the Registrable Securities owned by the Holders in each such jurisdiction; *provided*, *however*, that the Company shall not be required to qualify generally to do business in any jurisdiction or to register as a broker or dealer in such jurisdiction where it would not otherwise be required to qualify but for this Agreement, take any action that would cause it to become subject to any taxation in any jurisdiction where it would not otherwise be subject to such taxation or take any action that would subject it to the general service of process in any jurisdiction where it is not then so subject;

(b) prepare and file with the SEC such amendments and supplements as to the Registration Statement and the Prospectus used in connection therewith as may be necessary to keep such Registration Statement effective and to comply with the provisions of the Securities Act with respect to the disposition of the Registrable Securities covered by such Registration Statement, in each case for such time as is contemplated in the applicable provisions above;

(c) promptly furnish, without charge, to the Holders such number of copies of the Registration Statement, each amendment and supplement thereto (in each case including all exhibits), and the Prospectus included in such Registration Statement (including each preliminary Prospectus) in conformity with the requirements of the Securities Act, the documents incorporated by reference in such Registration Statement or Prospectus, and such other documents as the Holders may reasonably request in order to facilitate the public sale or other disposition of the Registrable Securities owned by the Holders;

(d) promptly notify the Holders: when the Registration Statement, any pre-effective amendment, the Prospectus or any prospectus supplement related thereto or post-effective amendment to the Registration Statement has been filed, and, with respect to the Registration Statement or any post-effective amendment, when the same has become effective, of the issuance by the SEC of any stop order suspending the effectiveness of the Registration Statement or the initiation or threat of any proceedings for that purpose, of any delisting or pending delisting of the Shares by any national securities exchange or market on which the Shares are then listed or quoted, and of the receipt by the Company of any notification with respect to the suspension of the qualification of any Registrable Securities for sale under the securities or "**blue sky**" laws of any jurisdiction or the initiation of any proceeding for such purpose;

(e) prevent the issuance of any order suspending the effectiveness of a Registration Statement, and, if any such order suspending the effectiveness of a Registration Statement is issued, shall promptly use commercially reasonable efforts to obtain the withdrawal of such order at the earliest possible moment;

(f) until the expiration of the period during which the Company is required to maintain the effectiveness of the applicable Registration Statement as set forth in the applicable sections hereof, promptly notify the Holders: of the existence of any fact of which the Company is aware or the happening of any event that has resulted, or could reasonably be expected to result, in the Registration Statement, as is then in effect, containing an untrue statement of a material fact or omitting to state a material fact required to be stated therein or necessary to make any statements therein not misleading or the Prospectus included in such Registration Statement containing an untrue statement of a material fact or omitting to state a material fact required to be stated therein or necessary to make any statements therein, in the light of the circumstances under which they were made, not misleading, and of the Company's reasonable determination that a post-effective amendment to the Registration Statement would be appropriate or that there exist circumstances not yet disclosed to the public which make further sales under such Registration Statement inadvisable pending such disclosure and post-effective amendment;

(g) if any event or occurrence giving rise to an obligation of the Company to notify the Holders pursuant to Section 6.1(f) takes place, subject to Section 5.1, prepare and, to the extent the exemption from prospectus delivery requirements in Rule 172 under the Securities Act is not available, furnish to the Holders a reasonable number of copies of a supplement or post-effective amendment to such Registration Statement or related Prospectus or any document incorporated therein by reference or file any other required document, and shall use commercially reasonable efforts to have such supplement or amendment declared effective, if required, as soon as practicable following the filing thereof, so that such Registration Statement shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading and as thereafter delivered to the purchasers of the Registrable Securities being sold thereunder, such Prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(h) cause all such Registrable Securities to be listed or quoted on the national securities exchange or market on which the Shares are then listed or quoted, if the listing or quotation of such Registrable Securities is then permitted under the rules of such national securities exchange or market;

(i) if requested by any Holder participating in an offering of Registrable Securities, as soon as practicable after such request, but in no event later than five (5) calendar days after such request, incorporate in a prospectus supplement or post-effective amendment such information concerning the Holder or the intended method of distribution as the Holder reasonably requests to be included therein and is reasonably necessary to permit the sale of the Registrable Securities pursuant to the Registration Statement, including information with respect to the number of Registrable Securities being sold, the purchase price being paid therefor and any other material terms of the offering of the Registrable Securities to be sold in such offering; *provided*, *however*, that the Company shall not be obligated to include in any such prospectus supplement or post-effective amendment any requested information that is not required by the rules of the SEC and is unreasonable in scope compared with the Company's most recent prospectus or prospectus supplement used in connection with a primary or secondary offering of equity securities by the Company;

(j) in connection with the preparation and filing of any Registration Statement or any sale of Securities in connection therewith, give the Holders offering and selling thereunder and their respective counsels the opportunity to review and provide comments on such Registration Statement, each Prospectus included therein or filed with the SEC, and each amendment thereof or supplement thereto (other than amendments or supplements that do not make any material change in the information related to the Company) (*provided* that the Company shall not file any such Registration Statement including Registrable Securities or an amendment thereto or any related prospectus or any supplement thereto to which such Holders or the managing underwriter or underwriters, if any, shall reasonably object in writing), and give each of them, together with any underwriter, broker, dealer or sales agent involved therewith, such access to its books and records and such opportunities to discuss the business of the Company and its subsidiaries with its officers, its counsel and the independent public accountants who have certified its financial statements as shall be necessary, in the opinion of the Holder's and such underwriters' (or broker's, dealer's or sales agent's, as the case may be) respective counsel, to conduct a reasonable due diligence investigation within the meaning of the Securities Act;

(k) provide a transfer agent and registrar, which may be a single entity, and a CUSIP number for the Registrable Securities not later than the effective date of the first Registration Statement filed hereunder;

(l) cooperate with the Holders who hold Registrable Securities being offered to facilitate the timely preparation and delivery of certificates for the Registrable Securities to be offered pursuant to the applicable Registration Statement and enable such certificates for the Registrable Securities to be in such denominations or amounts as the case may be, as the Holders may reasonably request, and, within two (2) Business Days after a Registration Statement which includes Registrable Securities is ordered effective by the SEC, the Company shall deliver, or shall cause legal counsel selected by the Company to deliver, to the transfer agent for the Registrable Securities (with copies to the Holders whose Registrable Securities are included in such Registration Statement) an appropriate instruction and opinion of such counsel;

(m) enter into an underwriting agreement in customary form and substance reasonably satisfactory to the Company, the Holders and the managing underwriter or underwriters of the public offering of Registrable Securities, if the offering is to be underwritten, in whole or in part; *provided* that the Holders may, at their option, require that any or all of the conditions precedent to the obligations of such underwriters under such underwriting agreement be conditions precedent to the obligations of the Holders. The Holders shall not be required to make any representations or warranties to or agreement with the Company or the underwriters other than representations, warranties or agreements regarding the Holders and their intended method of distribution and any other representation or warranty required by law. The Company shall cooperate and participate in the marketing of Registrable Securities, including participating in customary "roadshow" presentations, as the Holders and/or the managing underwriters may reasonably request; *provided* that the Company shall not be required to participate in any such presentation in connection with an offering of Registrable Securities for anticipated aggregate gross proceeds of less than $25 million; *provided further* that the Company and members of its management team will participate in customary investor conference calls related to a contemplated public offering of Registrable Securities (including any Block Trade) reasonably requested by the Holders and/or the managing underwriter without regard to the anticipated aggregate gross proceeds of such contemplated offering;

(n) furnish, at the request of a Holder on the date that any Registrable Securities are to be delivered to the underwriters for sale in connection with a registration pursuant to this Agreement, if such Shares are being sold through underwriters, or, if such Shares are not being sold through underwriters, on the date that the Registration Statement with respect to such Shares becomes effective, an opinion, dated such date, of the counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters, if any, to such Holder and a letter dated such date, from the independent certified public accountants of the Company who have certified the Company's financial statements included in such Registration Statement, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters, if any, and to such Holder;

(o) make available to the Holders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve (12) months, but not more than eighteen (18) months, beginning with the first month of the first fiscal quarter after the effective date of the applicable Registration Statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act, including Rule 158 promulgated thereunder; *provided* that such requirement will be deemed to be satisfied if the Company timely files complete and accurate information on Forms 10-K, 10-Q and 8-K under the Securities Exchange Act and otherwise complies with Rule 158 under the Securities Act or any successor rule thereto; and

(p) take all other reasonable actions necessary to expedite and facilitate disposition by the Holders of the Registrable Securities pursuant to the applicable Registration Statement.

6.2. Obligations of the Holders. In connection with any Registration Statement utilized by the Company to satisfy the provisions of this Agreement, each Holder agrees to reasonably cooperate with the Company in connection with the preparation of the Registration Statement, and each Holder agrees that such cooperation shall include responding within three (3) Business Days to any written request by the Company to provide or verify information regarding the Holder or the Holder's Registrable Securities (including the proposed manner of sale) that may be required to be included in any such Registration Statement pursuant to the rules and regulations of the SEC, and providing in a timely manner information regarding the proposed distribution by the Holder of the Registrable Securities and such other information as may be requested by the Company from time to time in connection with the preparation of and for inclusion in any Registration Statement and related Prospectus.

6.3. **Participation in Underwritten Registrations**. No Holder may participate in any underwritten registration, Underwritten Shelf Takedown or Block Trade hereunder unless such Holder agrees to sell his or its Registrable Securities on the basis provided in the applicable underwriting arrangements (which shall include a customary form of underwriting agreement, which shall provide that the representations and warranties by, and the other agreements on the part of, the Company to and for the benefit of the underwriters shall also be made to and for the benefit of the participating Holders) and completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents in customary form as reasonably required under the terms of such underwriting arrangements; *provided*, *however*, that, in the case of each of (a) and (b) above, if the provisions of such underwriting arrangements, or the terms or provisions of such questionnaires, powers of attorney, indemnities, underwriting agreements or other documents, are less favorable in any respect to such Holder than to any other person or entity that is party to such underwriting arrangements, then the Company shall use commercially reasonable efforts to cause the parties to such underwriting arrangements to amend such arrangements so that such Holder receives the benefit of any provisions thereof that are more favorable to any other person or entity that is party thereto. If any Holder does not approve of the terms of such underwriting arrangements, such Holder may elect to withdraw from such offering by providing written notice to the Company and the underwriter.

6.4. **Offers and Sales**. All offers and sales by a Holder under any Registration Statement shall be completed within the period during which the Registration Statement is required to remain effective pursuant to the applicable provision above and not the subject of any stop order, injunction or other order of the SEC. Upon expiration of such period, no Holder will offer or sell the Registrable Securities under the Registration Statement. If directed in writing by the Company, each Holder will return or, in each such Holder's sole discretion destroy, all undistributed copies of the applicable Prospectus in its possession upon the expiration of such period.

6.5. **Lockup**. In connection with any underwritten public offering of securities of the Company, each Holder and each of their Permitted Transferees (unless participating in such underwritten public offering) agrees (a "**Lock-Up Agreement**") not to effect any sale or distribution, including any sale pursuant to Rule 144, of any Registrable Securities, and not to effect any sale or distribution of other securities of the Company or of any securities convertible into or exchangeable or exercisable for any other securities of the Company (in each case, other than as part of such underwritten public offering), in each case, during the seven (7) calendar days prior to, and during such period as the managing underwriter may require (not to exceed ninety (90) calendar days) (or such other period as may be requested by the Company or the managing underwriter to comply with regulatory restrictions on the publication or other distribution of research reports and analyst recommendations and opinions, including, but not limited to, the restrictions contained in FINRA Rule 2711(f)(4), or any successor provisions or amendments thereto) beginning on, the closing date of the sale of such securities pursuant to such an effective registration statement, except as part of such registration; *provided* that all executive officers and directors of the Company are bound by and have entered into substantially similar Lock-Up Agreements; and *provided further* that the foregoing provisions shall only be applicable to such Holders if all such Holders, officers and directors are treated similarly with respect to any release prior to the termination of the lock-up period such that if any such persons are released, then all Holders shall also be released to the same extent on a pro rata basis.

Section 7. Indemnification; Contribution.

7.1. Indemnification by the Company. The Company agrees to indemnify and hold harmless each Holder and each person, if any, who controls any Holder within the meaning of Section 15 of the Securities Act or Section 20 of the Securities Exchange Act, and any of their partners, members, managers, officers, directors, trustees, employees or representatives, as follows:

(a) against any and all loss, liability, claim, damage, judgment and expense whatsoever, as incurred (including reasonable fees and disbursements of counsel to such Holders), arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto) pursuant to which the Registrable Securities were registered under the Securities Act, including all documents incorporated therein by reference, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading or arising out of or based upon any untrue statement or alleged untrue statement of a material fact included in any Issuer Free Writing Prospectus (within the meaning of Rule 433 of the Securities Act, and together with any preliminary Prospectus and other information conveyed to the purchaser of Registrable Securities at the time of sale (as such terms are used in Rule 159(a) of the Securities Act), the "**General Disclosure Package**"), the General Disclosure Package, or any Prospectus (or any amendment or supplement thereto), including all documents incorporated therein by reference, or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(b) against any violation or alleged violation by the Company of the Securities Act, the Securities Exchange Act, any state securities law or any rule or regulation promulgated under the Securities Act, the Securities Exchange Act or any state securities law;

(c) against any and all loss, liability, claim, damage, judgment and expense whatsoever, as incurred (including reasonable fees and disbursements of counsel to such Holders), and to the extent of the aggregate amount paid in settlement of any litigation, or investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, any such alleged untrue statement or omission, or any such violation or alleged violation, if such settlement is effected with the written consent of the Company (which consent shall not be unreasonably withheld or delayed); and

(d) against any and all expense whatsoever, as incurred (including reasonable fees and disbursements of counsel to such Holders), reasonably incurred in investigating, preparing, defending against or participating in (as a witness or otherwise) any litigation, arbitration, action, or investigation or proceeding by any governmental agency or body, commenced or threatened, in each case whether or not a party, or any claim whatsoever based upon any such untrue statement or omission, any such alleged untrue statement or omission or any such violation or alleged violation, to the extent that any such expense is not paid under subparagraph (a), (b) or (c) above;

provided, *however*, that the indemnity provided pursuant to Sections 7.1 through 7.3 does not apply to any Holder with respect to any loss, liability, claim, damage, judgment or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in strict conformity with written information furnished to the Company by such Holder expressly for use in the Registration Statement (or any amendment thereto) or the Prospectus (or any amendment or supplement thereto), or such Holder's failure to deliver an amended or supplemental Prospectus furnished to such Holder by the Company, if required by law to have been delivered, if such loss, liability, claim, damage, judgment or expense would not have arisen had such delivery occurred.

7.2. Indemnification by Holder. Each Holder severally and not jointly agrees to indemnify and hold harmless the Company, and each of its directors and officers (including each director and officer of the Company who signed a Registration Statement), and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Securities Exchange Act, as follows:

(a) against any and all loss, liability, claim, damage, judgment and expense whatsoever, as incurred (including reasonable fees and disbursements of counsel), arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto) pursuant to which the Registrable Securities of such Holder were registered under the Securities Act, including all documents incorporated therein by reference, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading or arising out of or based upon any untrue statement or alleged untrue statement of a material fact included in any Issuer Free Writing Prospectus (within the meaning of Rule 433 of the Securities Act), the General Disclosure Package, or any Prospectus (or any amendment or supplement thereto), including all documents incorporated therein by reference, or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(b) against any and all loss, liability, claim, damage, judgment and expense whatsoever, as incurred (including reasonable fees and disbursements of counsel), and to the extent of the aggregate amount paid in settlement of any litigation, or investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, if such settlement is effected with the written consent of such Holder; and

(c) against any and all expense whatsoever, as incurred (including reasonable fees and disbursements of counsel), reasonably incurred in investigating, preparing, defending or participating in (as a witness or otherwise) against any litigation, or investigation or proceeding by any governmental agency or body, commenced or threatened, in each case whether or not a party, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under subparagraph (a) or (b) above;

provided, *however*, that a Holder shall only be liable under the indemnity provided pursuant to Sections 7.1 through 7.3 with respect to any loss, liability, claim, damage, judgment or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in strict conformity with written information furnished to the Company by such Holder expressly for use in the Registration Statement (or any amendment thereto) or the Prospectus (or any amendment or supplement thereto) or such Holder's failure to deliver an amended or supplemental Prospectus furnished to such Holder by the Company, if required by law to have been delivered, if such loss, liability, claim, damage or expense would not have arisen had such delivery occurred. Notwithstanding the provisions of Sections 7.1 through 7.3, a Holder and any permitted assignee shall not be required to indemnify the Company, its officers, directors or control persons with respect to any amount in excess of the amount of the aggregate net cash proceeds received by such Holder or such permitted assignee, as the case may be, from sales of the Registrable Securities of such Holder under the Registration Statement that is the subject of the indemnification claim.

7.3. **Conduct of Indemnification Proceedings**. An indemnified party hereunder (the "**Indemnified Party**") shall give reasonably prompt notice to the indemnifying party (the "**Indemnifying Party**") of any action or proceeding commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify the Indemnifying Party shall not relieve it from any liability which it may have under the indemnity provisions of Sections 7.1 or 7.2 above, unless and only to the extent it did not otherwise learn of such action and the lack of notice by the Indemnified Party results in the forfeiture by the Indemnifying Party of substantial rights and defenses, and shall not, in any event, relieve the Indemnifying Party from any obligations to any Indemnified Party other than the indemnification obligation provided under Sections 7.1 or 7.2 above. If the Indemnifying Party so elects within a reasonable time after receipt of such notice, the Indemnifying Party may assume the defense of such action or proceeding at such Indemnifying Party's own expense with counsel chosen by the Indemnifying Party and approved by the Indemnified Party, which approval shall not be unreasonably withheld or delayed; *provided*, *however*, that the Indemnifying Party will not settle, compromise or consent to the entry of any judgment with respect to any such action or proceeding without the written consent of the Indemnified Party unless such settlement, compromise or consent secures the unconditional release of the Indemnified Party; and *provided further*, that, if the Indemnified Party reasonably determines that a conflict of interest exists where it is advisable for the Indemnified Party to be represented by separate counsel or that, upon advice of counsel, there may be legal defenses available to the Indemnified Party which are different from or in addition to those available to the Indemnifying Party, then the Indemnifying Party shall not be entitled to assume such defense and the Indemnified Party shall be entitled to separate counsel at the Indemnifying Party's expense. If the Indemnifying Party is not entitled to assume the defense of such action or proceeding as a result of the second proviso to the preceding sentence, the Indemnifying Party's counsel shall be entitled to conduct the Indemnifying Party's defense and counsel for the Indemnified Party shall be entitled to conduct the defense of the Indemnified Party, it being understood that both such counsel will cooperate with each other to conduct the defense of such action or proceeding as efficiently as possible. If the Indemnifying Party is not so entitled to assume the defense of such action or does not assume such defense, after having received the notice referred to in the first sentence of this paragraph, the Indemnifying Party will pay the reasonable fees and expenses of counsel for the Indemnified Party. In such event, however, the Indemnifying Party will not be liable for any settlement effected without the written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed. If an Indemnifying Party is entitled to assume, and assumes, the defense of such action or proceeding in accordance with this paragraph, the Indemnifying Party shall not be liable for any fees and expenses of counsel for the Indemnified Party incurred thereafter in connection with such action or proceeding.

7.4. Contribution.

(a) In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in Sections 7.1 through 7.3 is for any reason held to be unenforceable by the Indemnified Party although applicable in accordance with its terms, the Indemnified Party and the Indemnifying Party shall contribute to the aggregate losses, liabilities, claims, damages and expenses of the nature contemplated by such indemnity agreement incurred by the Indemnified Party and the Indemnifying Party, in such proportion as is appropriate to reflect the relative fault of the Indemnified Party on the one hand and the Indemnifying Party on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities, or expenses. The relative fault of the Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether the action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, has been made by, or relates to information supplied by, the Indemnifying Party or the Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action.

(b) The parties hereto agree that it would not be just or equitable if contribution pursuant to this Section 7.4 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding paragraph. Notwithstanding the provisions of this Section 7.4, a Holder shall not be required to contribute any amount (together with the amount of any indemnification payments made by such Holder pursuant to Section 7.2) in excess of the amount of the aggregate net cash proceeds received by such Holder from sales of the Registrable Securities of such Holder under the Registration Statement that is the subject of the indemnification claim.

(c) Notwithstanding the foregoing, 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. For purposes of this Section 7.4, each person, if any, who controls a Holder within the meaning of Section 15 of the Securities Act or Section 20 of the Securities Exchange Act, and any of their partners, members, officers, directors, trustees, employees or representatives, shall have the same rights to contribution as such Holder, and each director of the Company, each officer of the Company who signed a Registration Statement and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Securities Exchange Act shall have the same rights to contribution as the Company.

Section 8. Expenses.

8.1. Expenses. The Company will pay all Registration Expenses in connection with each registration of Registrable Securities pursuant to Sections 2 or 3. Each Holder shall be responsible for the payment of any and all brokerage and sales commissions, fees and disbursements of the Holder's counsel that are not Registration Expenses, accountants and other advisors, and any transfer taxes relating to the sale or disposition of the Registrable Securities by such Holder pursuant to any Registration Statement or otherwise.

Section 9. Rule 144 Reporting.

9.1. Rule 144 Reporting. With a view to making available to the Holders the benefits of Rule 144 and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration or pursuant to a registration statement, if the Shares of the Company are registered under the Securities Exchange Act, the Company agrees to:

(a) make and keep public information available as those terms are understood and defined in Rule 144 at all times after ninety (90) calendar days after the effective date of the first registration statement filed by the Company;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Securities Exchange Act (at any time after it has become subject to such reporting requirements);

(c) furnish to any Holder, so long as the Holder owns any Registrable Securities, upon request, a written statement by the Company that it has complied with the reporting requirements of Rule 144 (at any time after ninety (90) calendar days after the effective date of the first registration statement filed by the Company), the Securities Act and the Securities Exchange Act (at any time after it has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to a registration statement (at any time after it so qualifies), a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and such other information as may be reasonably requested in availing any Holder of any rule or regulation of the SEC which permits the selling of any such securities without registration or pursuant to such form; and

(d) provide notice in writing to each Holder that then has one or more designees on the Company's board of directors of the beginning and ending of any "**blackout period**" in connection with the Company's public issuances from time to time of earnings releases for fiscal quarters or fiscal years.

Section 10. Confidentiality.

10.1. Confidentiality. To the extent that the information and other material in connection with the registration rights contemplated in this Agreement (in any case, whether furnished before, on or after the date hereof) constitutes or contains confidential business, financial or other information of the Company or the Holders or their respective Affiliates, each party hereto covenants for itself and its directors, managers, partners, officers, employees and equityholders that it shall use due care to prevent its officers, directors, managers, partners, employees, equityholders, counsel, accountants and other representatives from disclosing such information to persons other than to their respective authorized employees, counsel, accountants, advisers, shareholders, partners, limited partners or members (or proposed shareholders, partners, limited partners or members or advisers of such persons), and other authorized representatives, in each case, so long as such person agrees to keep such information confidential in accordance with the terms hereof; *provided*, *however*, that each Holder or the Company may disclose or deliver any information or other material disclosed to or received by it should such Holder or the Company be advised by its counsel that such disclosure or delivery is required by law, regulation or judicial or administrative order or process and in any such instance the Holder or the Company, as the case may be, making such disclosure shall use reasonable efforts to consult with the Company prior to making any such disclosure. Notwithstanding the foregoing, a Holder will be permitted to disclose any information or other material disclosed to or received by it hereunder and not be required to provide the aforementioned notice, if such disclosure is in connection with (a) such Holder's reporting obligations pursuant to Section 13 or Section 16 of the Securities Exchange Act or (b) a routine audit by a regulatory or self-regulatory authority that maintains jurisdiction over the Holder; *provided*, *however*, that such Holder agrees, in the case of (b) in the preceding clause, to undertake to file an appropriate request seeking to have any information disclosed in connection with such routine audit treated confidentially. For purposes of this Section 10.1, "**due care**" means at least the same level of care that such Holder would use to protect the confidentiality of its own sensitive or proprietary information. This Section 10.1 shall not apply to information that is or becomes publicly available (other than to a person who by breach of this Agreement has caused such information to become publicly available).

Section 11. Miscellaneous.

11.1. Waivers. No waiver by a party hereto shall be effective unless made in a written instrument duly executed by the party against whom such waiver is sought to be enforced, and only to the extent set forth in such instrument. Neither the waiver by any of the parties hereto of a breach or a default under any of the provisions of this Agreement, nor the failure of any of the parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder shall thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any such provisions, rights or privileges hereunder.

11.2. Notices. Notices to the Company and to the Holders shall be sent to their respective addresses as set forth on Schedule I attached to this Agreement. The Company or any Holder may require notices to be sent to a different address by giving notice to the other parties in accordance with this Section 11.2. Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given upon receipt if and when delivered personally, sent by facsimile transmission (the confirmation being deemed conclusive evidence of such delivery) or by courier service or five calendar days after being sent by registered or certified mail (postage prepaid, return receipt requested), to such parties at such address.

11.3. Public Announcements and Other Disclosure. No Holder shall make any press release, public announcement or other disclosure with respect to this Agreement without obtaining the prior written consent of the Company, except as permitted pursuant to Section 10.1 or as may be required by law or by the regulations of any securities exchange or national market system upon which the securities of any such Holder shall be listed or quoted; *provided*, that in the case of any such disclosure required by law or regulation, the Holder making such disclosure shall use all reasonable efforts to consult with the Company prior to making any such disclosure.

11.4. Headings and Interpretation. All section and subsection headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning, construction or scope of any of the provisions hereof. The Holders hereby disclaim any defense or assertion in any litigation or arbitration that any ambiguity herein should be construed against the draftsman.

11.5. **Entire Agreement; Amendment**. This Agreement (including all schedules) constitutes the entire and only agreement among the parties hereto concerning the subject matter hereof and thereof, and supersedes any prior agreements or understandings concerning the subject matter hereof and thereof. Any oral statements or representations or prior written matter with respect thereto not contained herein shall have no force and effect. Except as otherwise expressly provided in this Agreement, no amendment, modification or discharge of this Agreement shall be valid or binding unless set forth in writing and duly executed by the Company and the Holders that, in the aggregate, hold not less than 90% of the then remaining Registrable Securities; *provided further* that no provision of this Agreement may be amended or modified unless any and each Holder adversely affected by such amendment or modification in a manner different than other Holders has expressly consented in writing to such amendment or modification.

11.6. **Assignment; Successors and Assigns**. This Agreement and the rights granted hereunder may not be assigned by any Holder without the written consent of the Company; *provided*, *however*, that the rights to cause the Company to register Registrable Securities pursuant to this Agreement may be assigned by a Holder to a Permitted Transferee of such Holder's Registrable Securities; *provided* that such transferee or assignee executes and delivers to the Company a joinder substantially in the form attached as Exhibit A. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto, their successors, heirs, legatees, devisees, permitted assigns, legal representatives, executors and administrators, except as otherwise provided herein.

11.7. **Saving Clause**. If any provision of this Agreement, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. If the operation of any provision of this Agreement would contravene the provisions of any applicable law, such provision shall be void and ineffectual. In the event that applicable law is subsequently amended or interpreted in such a way to make any provision of this Agreement that was formerly invalid valid, such provision shall be considered to be valid from the effective date of such interpretation or amendment.

11.8. **Counterparts**. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement, binding on all the parties hereto, even though all parties are not signatory to the original or the same counterpart.

11.9. **Representations**. Each of the parties hereto, as to itself only, represents that this Agreement has been duly authorized and executed by it and that all necessary corporate actions have been taken by it in order for this Agreement to be enforceable against it under all applicable laws. Each party hereto, as to itself only, further represents that all persons signing this Agreement on such party's behalf have been duly authorized to do so.

11.10. **Governing Law**. The parties agree that this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without application of the conflict of laws principles thereof.

11.11. **Service of Process and Venue**. Each of the parties hereto consents to submit itself to the personal jurisdiction of the United States District Court for the District of Delaware, the Delaware Supreme Court and the federal courts of the United States of America located in the State of Delaware in the event any dispute arises out of this Agreement, agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, agrees that it will not bring any action relating to this Agreement in any court other than any court of the United States located in the State of Delaware and consents to service being made through the notice procedures set forth in Section 11.2 hereof. Each of the parties hereto hereby agrees that service of any process, summons, notice or document by U.S. registered mail pursuant to Section 11.2 hereof shall be effective service of process for any suit or proceeding in connection with this Agreement.

11.12. **Specific Performance**. The parties hereto agree that irreparable damage would occur in the event the provisions of this Agreement were not performed in accordance with the terms hereof, and that the Holders and the Company shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or equity.

11.13. **No Third Party Beneficiaries**. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision of this Agreement against any of the parties hereto, and the covenants, undertakings and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the parties hereto or their respective successors, heirs, executors, administrators, legal representatives and permitted assigns.

11.14. **General Interpretive Principles**. For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in this Agreement include the plural as well as the singular, and the use of any gender or neuter form herein shall be deemed to include the other gender and the neuter form;

(b) references herein to “Sections”, “subsections,” “paragraphs”, and other subdivisions without reference to a document are to designated Sections, paragraphs and other subdivisions of this Agreement;

(c) a reference to a paragraph without further reference to a Section is a reference to such paragraph as contained in the same Section in which the reference appears, and this rule shall also apply to other subdivisions;

(d) the words “herein”, “hereof”, “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular provision;

(e) the term “include”, “includes” or “including” shall be deemed to be followed by the words “without limitation”; and

(f) the term “person” means any individual, corporation, partnership, limited liability company, association, joint venture, a joint stock company, trust, unincorporated organization, governmental or political subdivision or agency, or any other entity of whatever nature.

11.15. **Termination**. This Agreement shall terminate and be void and of no further force and effect, and all rights and obligations of the parties hereunder shall terminate without any further liability on the part of any party in respect thereof, upon the earlier to occur of the mutual written agreement of each of the parties hereto to terminate this Agreement or such date as no Registrable Securities remain outstanding.

11.16. **No Inconsistent Agreements**. Except for the Existing RRA, the Company is not currently a party to any agreement with respect to its securities that is inconsistent in any material respect with, or superior to, the registration rights granted to the Holders by this Agreement. Further, the Company shall not, without the prior written consent of each Holder, enter into any agreement with any current or future holder of any securities of the Company that would allow such current or future holder to require the Company to include securities in any registration statement filed by the Company with rights superior to those of the Holders of Registrable Securities with respect to cutback priority hereunder.

[*Signature Pages Follow*]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

COMPANY:

HIGHPEAK ENERGY, INC.

By: /s/ Michael Hollis
Name: Michael Hollis
Title: President and CEO

HOLDERS:

PT Danantara Energy International

By: /s/ Pandu Patria Sjahrir
Name: Pandu Patria Sjahrir
Title: Authorized Official

PT Tunas Harapan Perkasa

By: /s/ Syailendra S. Bakrie
Name: Syailendra S. Bakrie
Title: President Director

EXHIBIT A

FORM OF JOINDER

(*see attached*)

SCHEDULE I

NOTICE ADDRESSES

Party	Address for Notice
HighPeak Energy, Inc.	421 W. 3rd Street, Suite 1000, Fort Worth, Texas 76102

Exhibit 10.2

Execution Version

CREDIT AGREEMENT

DATED AS OF NOVEMBER 20, 2026

AMONG

HIGHPEAK ENERGY, INC.,
AS BORROWER,

CITIBANK, N.A.,
AS ADMINISTRATIVE AGENT AND COLLATERAL AGENT,

AND

THE LENDERS AND ISSUING BANKS PARTY HERETO

CITIBANK, N.A., FIFTH THIRD BANK, NATIONAL ASSOCIATION, BANK OZK, CITIZENS BANK, N.A., THE HUNTINGTON NATIONAL BANK, AND KEYBANK NATIONAL ASSOCIATION
AS JOINT LEAD ARRANGERS AND JOINT BOOKRUNNERS

GOLDMAN SACHS BANK USA, FIRST-CITIZENS BANK & TRUST COMPANY,
AND REGIONS BANK
AS CO. DOCUMENTATION AGENTS

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Schedule 2.08	Existing Letters of Credit and LC Issuance Limit
Schedule 7.05	Litigation
Schedule 7.06	Environmental Matters
Schedule 7.13	Subsidiaries and Partnerships
Schedule 7.18	Gas Imbalances
Schedule 7.19	Marketing Contracts
Schedule 7.21	Swap Agreements
Schedule 7.30	Material Contracts
Schedule 7.33	Accounts

This Credit Agreement dated as of November 20, 2026 is among HighPeak Energy, Inc., a Delaware corporation (the "Borrower"), each of the Lenders (as hereinafter defined) from time to time party hereto, each of the Issuing Banks (as hereinafter defined) from time to time party hereto, and Citibank, N.A. (in its individual capacity, "Citi"), as administrative agent for the Lenders (in such capacity, together with its successors in such capacity, the "Administrative Agent") and as collateral agent for the Secured Parties (as hereinafter defined) (in such capacity, together with its successors in such capacity, the "Collateral Agent").

R E C I T A L S

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

B. The Lenders and the Issuing Banks have agreed to make such loans and extensions of credit subject to the terms and conditions of this Agreement.

C. In consideration of the mutual covenants and agreements herein contained and of the loans, extensions of credit and commitments hereinafter referred to, 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", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted Reference Rate.

"Account Control Agreement" means a control agreement, in form and substance reasonably satisfactory to the Administrative 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 Commodity 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 Commodity Account is maintained.

"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)(G).

"Adjusted Reference Rate" means, at any time, the highest of (a) the Prime Rate, (b) the Federal Funds Effective Rate plus 0.50% and (c) Term SOFR Rate for a one-month tenor at approximately 5:00 a.m. Houston time on such day (or any amended publication time for the Term SOFR Reference Rate, as specified by the CME Term SOFR Administrator in the Term SOFR Reference Rate methodology) plus 1.00%; each change in the Adjusted Reference Rate shall take effect simultaneously with the corresponding change or changes in the Prime Rate, the Federal Funds Effective Rate or Term SOFR Rate, as applicable (provided that clause (c) shall not be applicable during any period in which Term SOFR Rate is unavailable or unascertainable). If the Adjusted Reference Rate is being used as an alternate rate of interest pursuant to Section 3.03 hereof (for the avoidance of doubt, only until the Benchmark Replacement has been determined pursuant to Section 3.03(b)), then the Adjusted Reference Rate shall be the greater of clauses (a) and (b) above without reference to clause (c) above. Notwithstanding the foregoing, in no event shall the Adjusted Reference Rate be less than 0.00%.

"Administrative Agent" has the meaning set forth in the Preamble.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent to the Borrower or any Lender, as the context requires.

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

"Affected Loans" has the meaning assigned such term in Section 5.05.

"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 any other agent from time to time party hereto; and "Agent" shall mean either the Administrative Agent, the Collateral Agent or such other agent, as the context requires.

"Aggregate Balance" means the sum of the total Revolving Credit Exposures at such time plus the total Term Loan Exposures at such time.

"Aggregate Elected Commitment Amounts" at any time shall equal the sum of the Elected Commitments, as the same may be (a) increased, reduced or terminated pursuant to Section 2.06(c) and (d), and (b) modified from time to time pursuant to assignments in accordance with Section 12.04(b). As of the Effective Date, the Aggregate Elected Commitment Amounts are $750,000,000.

"Aggregate Maximum Credit Amounts" at any time shall equal the sum of the Maximum Credit Amounts, as the same may be reduced or terminated, in each case, pursuant to Section 2.06. As of the Effective Date, the Aggregate Maximum Credit Amounts are $1,500,000,000.

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

"Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction, including but not limited to the U.S. Foreign Corrupt Practices Act of 1977, as amended, applicable to the Borrower or any of its Restricted Subsidiaries concerning or relating to bribery or corruption.

"Applicable Margin" means for any day, (a) with respect to the Term Loans, (i) from the Effective Date until the date that is nine (9) months after the Effective Date, (x) 3.00% for any ABR Loan or (y) 4.00% for any Term Benchmark Loan, and (ii) on and after the date that is nine (9) months after the Effective Date, (x) 3.25% for any ABR Loan or (y) 4.25% for any Term Benchmark Loan, and (b) with respect to any Revolving Loan, or with respect to the commitment fee rate (the "Commitment Fee Rate"), as the case may be, the rate per annum set forth in the Revolving Borrowing Base Utilization Grid below based upon the Revolving Borrowing Base Utilization Percentage then in effect:

Revolving Borrowing Base Utilization Grid					
Revolving Borrowing Base Utilization Percentage	*<25%*	*≥25% and < 50%*	*≥50% and <75%*	*≥75% and <90%*	*≥90%*
Term Benchmark Loans	*2.75%*	*3.00%*	*3.25%*	*3.50%*	*3.75%*
ABR Loans	*1.75%*	*2.00%*	*2.25%*	*2.50%*	*2.75%*
Commitment Fee Rate	*0.375%*	*0.375%*	*0.50%*	*0.50%*	*0.50%*

"Applicable Percentage" means, with respect to any Lender, the percentage of the Aggregate Maximum Credit Amounts represented by such Lender's Maximum Credit Amount as such percentage is set forth on Annex I or, if such Lender has entered into any Assignment and Assumption, the percentage of the Aggregate Maximum Credit Amounts represented by such Lender's Maximum Credit Amount as set forth in the Assignment and Assumption.

"Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Approved Petroleum Engineers" means (a) Cawley Gillespie and Associates, Inc., or (b) one or more other independent petroleum engineering firms reasonably acceptable to the Required Lenders.

"Arrangers" means, collectively, (a) Citi, (b) Fifth Third Bank, National Association, (c) Bank OZK, (d) Citizens Bank, N.A., (e) the Huntington National Bank, and (f) KeyBank National Association, in their capacities as the joint lead arrangers and joint bookrunners hereunder.

"ASC" means the Financial Accounting Standards Board Accounting Standards Codification, as in effect from time to time.

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

"Available Free Cash Flow" means, as of any date on which the Borrower makes any Restricted Payment pursuant to Section 9.04(f), an Investment pursuant to Section 9.05(k) or a Redemption pursuant to Section 9.22(c) or (e) (such Redemption, in reliance on Section 9.04(f)) (such Restricted Payment, Investment or Redemption, a "Free Cash Flow Utilization"), in each case, in reliance on Available Free Cash Flow (each such date, a "Date of Determination"), the amount equal to: (a) Free Cash Flow for the four fiscal quarter period immediately preceding such Date of Determination for which financial statements and the related compliance certificate reports have been delivered pursuant to Section 8.01(a) or Section 8.01(b), as applicable, Section 8.01(c) and Section 8.01(p), minus (b) the aggregate amount of all (A) Restricted Payments made pursuant to Section 9.04(f), (B) Investments made pursuant to Section 9.05(k), and (C) Redemptions made pursuant to Section 9.22(c) or (e) (such Redemption, in reliance on Section 9.04(f)), in each case, in reliance on Available Free Cash Flow, and in each case, following such four fiscal quarter period and prior to the date on which financial statements and the related compliance certificate reports have been delivered pursuant to Section 8.01(a) or Section 8.01(b), as applicable, Section 8.01(c) and Section 8.01(p) for the next following fiscal quarter. For purposes of determining Available Free Cash Flow as of any time of determination, any Free Cash Flow Utilization shall be deemed to have occurred in the earliest fiscal quarter in the relevant four fiscal quarter period, to the extent that there was Available Free Cash Flow greater than $0 in such fiscal quarter and such Available Free Cash Flow has not otherwise been utilized for any previous Free Cash Flow Utilizations; provided that (i) for the avoidance of doubt, to the extent a Free Cash Flow Utilization exceeds the Available Free Cash Flow for the earliest fiscal quarter in such relevant period (after giving effect to any previous Free Cash Flow Utilizations), it shall be deemed to occur in the immediately following fiscal quarter to the extent of the lesser of (A) such excess and (B) Available Free Cash Flow in such fiscal quarter (after giving effect to any previous Free Cash Flow Utilizations) and (ii) for further clarification, it is the intent of the parties hereto that Available Free Cash Flow and Free Cash Flow Utilizations are applied on a "first in, first out" basis for each relevant period.

"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 component thereof) or payment period for interest calculated with reference to such Benchmark (or component thereof), as applicable, that is or may be used for determining the length of an Interest Period for any term rate or otherwise, for determining any frequency of making payments of interest calculated 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 Products" means any of the following bank services: (a) commercial credit cards, (b) stored value cards, and (c) treasury management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, overdrafts and interstate depository network services).

"Bank Products Provider" means (a) any Lender or Affiliate of a Lender that provides Bank Products to the Borrower or any Restricted Subsidiary, in its capacity as a provider of such Bank Products and (b) Wells Fargo Bank, N.A., in its capacity as a provider of Bank Products to the Borrower.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy", as now and hereafter in effect, or any successor statute.

"Benchmark" means, initially, the Term SOFR Rate; provided that if a Benchmark Transition Event and the related Benchmark Replacement Date have occurred with respect to the Term SOFR Rate 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, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(1) Daily Simple SOFR; or

(2) 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 dollar-denominated syndicated credit facilities at such time in the United States and (b) the related Benchmark Replacement Adjustment;

If the Benchmark Replacement as determined pursuant to clause (1) or (2) 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, 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 and/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 dollar-denominated syndicated credit facilities at such time.

"Benchmark Replacement Conforming Changes" means, with respect to any Benchmark Replacement and/or any Term Benchmark Loan, any technical, administrative or operational changes (including changes to the definition of "Adjusted Reference Rate," the definition of "Business Day," the definition of "U.S. Government Securities 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 decides may be appropriate to reflect the adoption and implementation of such Benchmark 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 exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"Benchmark Replacement Date" means, with respect to any Benchmark, the earliest to occur of the following events with respect to such 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); or

(2) in the case of clause (3) of the definition of "Benchmark Transition Event," the first date on which such Benchmark (or the published component used in the calculation thereof) has been or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or component thereof) have been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if such Benchmark (or component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

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, with respect to any Benchmark, the occurrence of one or more of the following events with respect to such 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 such Benchmark (or such component thereof) or, if such Benchmark is a term rate, 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, the NYFRB, the CME Term SOFR Administrator, 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), in each case, which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, 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 such Benchmark (or such component thereof) or, if such Benchmark is a term rate, 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 such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, 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, with respect to any Benchmark, 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 such 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 such 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.

"Borrower" has the meaning set forth in the Preamble.

"Borrowing" means Loans of the same Type, made, converted or continued on the same date and, in the case of Term Benchmark 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 adjusted from time to time pursuant to Section 2.07(e), Section 2.07(f), Section 8.13(c) and any other provision hereunder or in any other Loan Document which requires or permits the amount of the Borrowing Base to be adjusted.

"Borrowing Base Deficiency" occurs if at any time (a) the Aggregate Balance exceeds (b) the Borrowing Base then in effect.

"Borrowing Base Properties" means the Proved Reserves of the Credit Parties included in the most recently delivered Engineering Reports and evaluated for purposes of determining the Borrowing Base then in effect.

"Borrowing Base Value" means, (a) with respect to any Oil and Gas Property constituting Proved Reserves of a Credit Party, the value the Administrative Agent attributed to such asset in connection with the most recent determination of the Borrowing Base hereunder (which value has been approved by the Required Lenders) and (b) with respect to any Swap Agreement in respect of commodities, the Swap PV of such Swap Agreement.

"Borrowing Request" means a request by the Borrower for a Borrowing in accordance with Section 2.03.

"Business Day" means any day (other than a Saturday or Sunday) on which commercial banks in New York City or Houston, Texas are open for business; provided that, in relation to Term Benchmark Loans and any interest rate settings, fundings, disbursements, settlements or payments of any such Term Benchmark Loan, or any other dealings of such Term Benchmark Loan, any such day that is only a U.S. Government Securities Business Day.

"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.

"CERCLA" has the meaning set forth in the definition of "Environmental Laws".

"Certificate of Designation" means that certain Certificate of Designation of Series A Convertible Preferred Stock of HighPeak Energy, Inc. executed by the Borrower with respect to the Effective Date Preferred Equity.

"CFC" means any Subsidiary that is a "controlled foreign corporation" within the meaning of Section 957(a) of the Code.

"Change in Control" means the earlier to occur of:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act (but excluding any employee benefit plan of such person and its Subsidiaries, or any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan)) other than one or more Permitted Holders, shall become the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under such Act), directly or indirectly, of more than fifty percent (50%) of outstanding Voting Stock of the Borrower; or

(b) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower shall cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body ; or

(c) any "change of control" or similar event occurs under the Effective Date Preferred Equity Documents; or

(d) any "change of control" or similar event occurs under any Permitted Additional Debt or other Material Debt; or

(e) any Guarantor ceases to be a Wholly-Owned Subsidiary of the Borrower other than as a result of a sale of all of the Equity Interests of such Guarantor or a merger of such Guarantor permitted under Section 9.10 or Section 9.11.

"Change in Law" means (a) the adoption or implementation of any law, rule or regulation after Effective Date, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after Effective Date or (c) compliance by any Lender or any Issuing Bank (or, for purposes of Section 5.01(b), by any lending office of such Lender or by such Lender's or any 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 Effective Date; provided, however, for the purposes of this Agreement, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, guidelines or directives in connection therewith or promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision or the United States or foreign regulatory authorities, in each case, pursuant to Basel III, are deemed to have gone into effect and to have been adopted after the Effective Date.

"Citi" has the meaning set forth in the Preamble.

"CME Term SOFR Administrator" means CME Group Benchmark Administration Limited as administrator of the forward-looking term Secured Overnight Financing Rate (SOFR) (or a successor administrator).

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" means all Property of the Credit Parties, now owned or hereafter acquired, upon which a Lien is created or purported to be created by any Security Instrument, including without limitation, the Mortgaged Property. Collateral shall not include any Excluded Assets.

"Collateral Agent" has the meaning set forth in the Preamble.

"Commitment Fee Rate" has the meaning set forth in the definition of "Applicable Margin".

"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 any regulations promulgated thereunder.

"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 Net Income" means with respect to the Borrower and the Consolidated Restricted Subsidiaries, for any period, the aggregate of the net income (or loss) of the Borrower and the Consolidated Restricted Subsidiaries after allowances for taxes for such period determined on a consolidated basis in accordance with GAAP; *provided* that there shall be excluded from such net income (to the extent otherwise included therein) the following: (a) the net income of any Person in which the Borrower or any Consolidated Restricted Subsidiary has an interest (which interest does not cause the net income of such other Person to be consolidated with the net income of the Borrower and the Consolidated Restricted Subsidiaries in accordance with GAAP), except to the extent of the amount of dividends or distributions actually paid in cash during such period by such other Person to the Borrower or to a Consolidated Restricted Subsidiary, as the case may be; (b) the net income (but not loss) during such period of any Consolidated Restricted Subsidiary to the extent that the declaration or payment of dividends or similar distributions or transfers or loans by that Consolidated Restricted Subsidiary is not at the time permitted by operation of the terms of its charter or any agreement, instrument or Governmental Requirement applicable to such Consolidated Restricted Subsidiary or is otherwise restricted or prohibited, in each case determined in accordance with GAAP; (c) the net income (or loss) of any Person acquired in a pooling-of-interests transaction for any period prior to the date of such transaction; (d) any extraordinary gains or losses during such period, (e) any gains or losses attributable to writeups or writedowns of assets; (f) any gain or loss from the sale of assets other than in the ordinary course of business; (g) any income or loss attributable to the early extinguishment of any Debt of the Borrower or a Consolidated Restricted Subsidiary and (h) the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies during such period whether effected through a cumulative effect adjustment or a retroactive application, in each case, in accordance with GAAP.

"Consolidated Net Leverage Ratio" means, as of the last day of any fiscal quarter (or any other date of determination for purposes of Section 9.04(d), (e) and (f), Section 9.05(j) and (k) and Section 9.22(c) and (e)), the ratio of Total Net Debt to EBITDAX for the Rolling Period then ending (or any other date of determination for purposes of Section 9.04(d), (e) and (f), Section 9.05(j) and (k) and Section 9.22(c) and (e), the most recently ended Rolling Period for which financial statements have been delivered pursuant to Section 8.01(a) or Section 8.01(b), as applicable).

"Consolidated Restricted Subsidiaries" means any Restricted Subsidiaries that are Consolidated Subsidiaries.

"Consolidated Subsidiaries" means each Subsidiary of the Borrower (whether now existing or hereafter created or acquired) the financial statements of which shall be (or should have been) consolidated with the financial statements of the Borrower in accordance with GAAP.

"Consolidated Unrestricted Subsidiaries" means any Unrestricted Subsidiaries that are Consolidated Subsidiaries.

"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. For the purposes of this definition, and without limiting the generality of the foregoing, any Person that owns directly or indirectly 10% or more of the Equity Interests having ordinary voting power for the election of the directors or other governing body of a Person (other than as a limited partner of such other Person) will be deemed to "control" such other Person. "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.

"Covered Entity" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) 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 assigned to it in Section 12.18.

"Credit Parties" means, collectively, the Borrower and each Guarantor, and "Credit Party" means any one of the foregoing.

"Daily Simple SOFR" means, for any day, (a "SOFR Rate Day"), a rate per annum equal to SOFR for the day (such day "SOFR Determination Date") that is five (5) U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator's Website; provided that if Daily Simple SOFR as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement and the other Loan Documents. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrower. If by 5:00 p.m. (New York City time) on the second (2nd) U.S. Government Securities Business Day immediately following any SOFR Determination Date, SOFR in respect of such SOFR Determination Date has not been published on the SOFR Administrator's Website and a Benchmark Replacement Date with respect to the Daily Simple SOFR has not occurred, then SOFR for such SOFR Determination Date will be SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which such SOFR was published on the SOFR Administrator's Website.

"Debt" means, for any Person, the sum of the following (without duplication): (a) all obligations of such Person for borrowed money or evidenced by bonds, bankers' acceptances, debentures, notes or other similar instruments; (b) all obligations of such Person (whether contingent or otherwise) in respect of letters of credit, surety or other bonds and similar instruments; (c) all accounts payable and all accrued expenses, liabilities or other obligations of such Person to pay the deferred purchase price of Property or services (excluding accounts payable and accrued expenses, liabilities or other obligations to pay the deferred purchase price of Property or services, from time to time incurred in the ordinary course of business which are not greater than ninety (90) days past due or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP); (d) all obligations under Finance Leases; (e) all obligations under Synthetic Leases; (f) all Debt (as defined in the other clauses of this definition) of others secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) a Lien on any Property of such Person, whether or not such Debt is assumed by such Person, to the extent of the lesser of (i) the amount of such Debt and (ii) the fair market value (as determined by the Borrower in good faith) of the property of such Person securing such Debt; (g) all Debt (as defined in the other clauses of this definition) of others guaranteed by such Person (directly or indirectly, and contingent or otherwise) or in which such Person otherwise assures a creditor against loss of the Debt (howsoever such assurance shall be made) to the extent of the lesser of the amount of such Debt and the maximum stated amount of such guarantee or assurance against loss; (h) all obligations or undertakings of such Person to maintain or cause to be maintained the financial position or covenants of others and, to the extent entered into as a means of providing credit support for the obligations of others and not primarily to enable such Person to acquire any such Property, all obligations or undertakings of such Person to purchase the Debt or Property of others; (i) obligations to deliver commodities, goods or services, including, without limitation, Hydrocarbons, in consideration of one or more advance payments, other than gas balancing arrangements in the ordinary course of business; (j) obligations to pay for goods or services (even if such goods or services are not actually received or utilized by such Person) (excluding items excluded by the parenthetical in clause (c) above), but solely to the extent such obligations are included as a liability of such Person under GAAP; (k) any Debt of a partnership for which such Person is liable either by agreement, by operation of law or by a Governmental Requirement but only to the extent of such liability; (l) Disqualified Capital Stock; and (m) the undischarged balance of any production payment created by such Person or for the creation of which such Person directly or indirectly received payment. Except as explicitly set forth above, the Debt of any Person shall include all obligations of such Person of the character described above to the extent such Person remains legally liable in respect thereof notwithstanding that any such obligation is not included as a liability of such Person under GAAP. For the avoidance of doubt, the Effective Date Preferred Equity as in effect on the date hereof shall be deemed not to constitute "Debt" hereunder.

"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 Revolving Lender that (a) has failed, within two (2) Business Days of the date required to be funded or paid, to (i) fund any portion of its Revolving Loans unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, (ii) fund any portion of its participations in Letters of Credit or (iii) pay over to any Agent, any Issuing Bank, or any other Lender any other amount required to be paid by it hereunder; (b) has notified the Borrower or any Agent, any Issuing Bank, or any other Lender 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 relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default , shall be specifically identified in such writing or public statement) 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 the Administrative Agent or a Credit Party, acting in good faith, to provide a certification in writing from an authorized officer of such Revolving Lender that it will comply with its obligations to fund prospective Revolving Loans and participations in then outstanding Letters of Credit under this Agreement; provided that such Revolving Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon the Administrative Agent's and such Credit Party's receipt of such certification in form and substance satisfactory to it and the Administrative Agent; or (d) has (or whose bank holding company has) been placed into receivership, conservatorship or bankruptcy or has become the subject of a Bail-In Action; provided that a Revolving Lender shall not become a Defaulting Lender solely as a result of the acquisition or maintenance of an ownership interest in such Revolving Lender or Person controlling such Revolving Lender or the exercise of control over a Revolving Lender or Person controlling such Revolving Lender by a Governmental Authority or an instrumentality thereof (including the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official by a supervisory authority or regulator with respect to a Revolving Lender (or a bank holding company of a Revolving Lender) under the Dutch Financial Supervision Act 2007 (as amended from time to time and including any successor legislation)), so long as such ownership interest does not result in or provide such Revolving 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 Revolving Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Revolving Lender.

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

"Disqualified Capital Stock" means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event or condition, (a) matures or is mandatorily redeemable for any consideration other than other Equity Interests (which would not constitute Disqualified Capital Stock), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale event so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior Payment in Full), (b) is redeemable at the option of the holder thereof (except as a result of a change of control or asset sale event so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior Payment in Full), (c) provides for scheduled, mandatory payments of dividends in cash, or (d) is convertible or exchangeable for Debt or redeemable for any consideration other than other Equity Interests (which would not constitute Disqualified Capital Stock), in whole or in part, in the case of each of the foregoing clauses (a), (b), (c), and (d), on or prior to the date that is ninety-one (91) days after the Revolving Maturity Date in effect at the time of the issuance thereof. For the avoidance of doubt, the Effective Date Preferred Equity as in effect on the date hereof shall be deemed not to constitute "Disqualified Capital Stock" hereunder.

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

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

"EBITDAX" means, for any period, the sum of Consolidated Net Income for such period plus the following expenses or charges to the extent deducted in the calculation of Consolidated Net Income in such period: interest, income and margin taxes, depreciation, depletion, amortization, accretion of discount, exploration and abandonment expenses, other non-recurring expenses, and all other non-cash charges (including, without limitation, any non-cash charges from or related to Swap Agreements) for such period, minus non-cash gains (including, without limitation, any non-cash gains from or related to Swap Agreements), interest income, and other non-recurring income to the extent added to Consolidated Net Income in such period; provided that Consolidated Net Income shall be calculated after giving pro forma effect to any Material Acquisition or Material Disposition that occurred at any time during such period, as if such Material Acquisition or Material Disposition had occurred on the first day of such period.

"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 November 20, 2026.

"Effective Date Preferred Equity" means the convertible preferred Equity Interests issued by the Borrower to the Initial Holders on the Effective Date in accordance with the Effective Date Preferred Equity Documents, in the initial amount of $450,000,000.

"Effective Date Preferred Equity Documents" means the applicable organizational document governing the Effective Date Preferred Equity and each other agreement, instrument, certificate, or document (other than the Loan Documents) executed by any Credit Party or any of its Subsidiaries or any of their respective officers at any time in connection with the issuance of, or governance of, the Effective Date Preferred Equity including without limitation the Certificate of Designation, in each case, as amended, restated, supplemented, or otherwise modified to the extent not prohibited under the terms of this Agreement.

"Elected Commitment" means, as to each Revolving Lender, the amount set forth opposite such Revolving Lender's name on Annex I under the caption "Elected Commitment Amount", as the same may be (a) increased, reduced or terminated from time to time in connection with an increase, reduction or termination of the Aggregate Elected Commitment Amounts pursuant to Section 2.06(c) and (d), and (b) modified from time to time pursuant to assignments in accordance with Section 12.04(b).

"Elected Commitment Increase Certificate" has the meaning given to such term in Section 2.06(c)(ii)(F).

"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 such term in Section 2.07(c)(i).

"Environmental Laws" means any and all current or future Governmental Requirements pertaining in any way to human health and safety (to the extent relating to Hazardous Materials), the environment, the preservation or reclamation of natural resources, or the management, Release or threatened Release of any Hazardous Materials, in effect and applicable to the operations of the Borrower or any Restricted Subsidiary, including, the Oil Pollution Act of 1990 ("OPA"), as amended, the Clean Air Act, as amended, the Comprehensive Environmental, Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, the Federal Water Pollution Control Act, as amended, the Occupational Safety and Health Act of 1970, as amended, the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended, those laws and regulations administered by the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration, including the Pipeline Safety Statutes 49 U.S.C. Chapters 601 & 603 and regulations at 49 CFR Parts 190-199, as amended, the Safe Drinking Water Act, as amended, the Toxic Substances Control Act, as amended, the Superfund Amendments and Reauthorization Act of 1986, as amended, and the Hazardous Materials Transportation Act, as amended.

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

"Equity Interests" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such Equity Interest.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute, and any regulations promulgated thereunder.

"ERISA Affiliate" means each trade or business (whether or not incorporated) which together with the Borrower or a Restricted Subsidiary would be deemed to be a "single employer" within the meaning of Section 4001(b)(1) of ERISA or subsections (b) or (c) of Section 414 of the Code or, solely for the purposes of Section 302 of ERISA and Section 412 of the Code, subsections (m) or (o) of Section 414 of the Code.

"ERISA Event" means (a) the occurrence of a "Reportable Event" described in Section 4043 of ERISA with respect to a Plan subject to Title IV of ERISA (other than a Multiemployer Plan), other than a Reportable Event as to which the provisions of thirty (30) days' notice to the PBGC is expressly waived under applicable regulations, (b) the failure by any Plan subject to Title IV of ERISA to satisfy the minimum funding standard (within the meaning of Sections 412 or 430 of the Code or Section 302 of ERISA) applicable to the Plan, or the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard, in each case whether or not waived, (c) the failure to make by its due date a required installment under Section 430(j) of the Code with respect to any Plan, (d) the withdrawal of the Borrower, a Restricted Subsidiary or any ERISA Affiliate from a Plan subject to Title IV of ERISA during a plan year in which it was a "substantial employer" as defined in Section 4001(a)(2) of ERISA, (e) a determination that any Plan subject to Title IV of ERISA is, or is expected to be, in "at risk" status (within the meaning of Section 430 of the Code or Section 303 of ERISA), (f) the filing of a notice of intent to terminate a Plan subject to Title IV of ERISA (other than a Multiemployer Plan) or the treatment of a Plan amendment as a termination under Section 4041 of ERISA, (g) the institution of proceedings to terminate a Plan by the PBGC, (h) a complete or partial withdrawal by Borrower, a Restricted Subsidiary or an ERISA Affiliate from a Multiemployer Plan or receipt of a notice of withdrawal liability pursuant to Section 4202 of ERISA or a determination that a Multiemployer Plan is, or is expected to be, "insolvent" (within the meaning of Section 4245 of ERISA), or in endangered or critical status (within the meaning of Section 432 of the Code or Section 305 of ERISA), (i) the failure by Borrower, a Restricted Subsidiary or an ERISA Affiliate to make any required contribution to a Multiemployer Plan, (j) the existence with respect to any Plan or any trust created thereunder of a non-exempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could result in a material liability to Borrower or any Credit Party, (k) the occurrence of any other event or condition which would reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or (l) the imposition of any liability under Title IV of ERISA, including the imposition of a lien under Section 412 or 430(k) of the Code or Section 303 or 4068 of ERISA on any property (or rights to property, whether real or personal) of Borrower, a Restricted Subsidiary or an ERISA Affiliate, but excluding PBGC premiums due but not delinquent under Section 4007 of ERISA, upon Borrower, a Restricted Subsidiary or an ERISA Affiliate.

"Erroneous Payment" has the meaning assigned to it in Section 11.14(a).

"Erroneous Payment Deficiency Assignment" has the meaning assigned to it in Section 11.14(d)(i).

"Erroneous Payment Impacted Class" has the meaning assigned to it in Section 11.14(d)(i).

"Erroneous Payment Return Deficiency" has the meaning assigned to it in Section 11.14(d)(i).

"Erroneous Payment Subrogation Rights" has the meaning assigned to it in Section 11.14(e).

"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 such term in Section 10.01.

"Excepted Liens" means: (a) Liens for Taxes, assessments or other governmental charges or levies which are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (b) Liens in connection with workers' compensation, unemployment insurance or other social security, old age pension or public liability obligations which are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (c) statutory landlord's liens, operators', vendors', carriers', warehousemen's, repairmen's, mechanics', suppliers', workers', materialmen's, construction or other like Liens, in each case, arising by operation of law in the ordinary course of business or incident to the exploration, development, operation and maintenance of Oil and Gas Properties each of which is in respect of obligations that are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (d) contractual Liens which arise in the ordinary course of business under operating agreements, joint venture agreements, oil and gas partnership agreements, oil and gas leases, farm-out 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 agreements, 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 which are usual and customary in the oil and gas business and are for claims which are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP, provided that any such Lien referred to in this clause does not materially impair the use of the Property covered by such Lien for the purposes for which such Property is held by the Borrower or any Restricted Subsidiary or materially impair the value of such Property subject thereto; (e) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies in the ordinary course of business and burdening only deposit accounts or other funds maintained with a creditor depository institution, provided that no such deposit account is a dedicated cash collateral account or is subject to restrictions against access by the depositor in excess of those set forth by regulations promulgated by the Board and no such deposit account is intended by the Borrower or any of its Restricted Subsidiaries to provide collateral to the depository institution; (f) easements, restrictions, servitudes, permits, conditions, covenants, exceptions or reservations in any Property of the Borrower or any Restricted Subsidiary for the purpose of roads, pipelines, transmission lines, transportation lines, distribution lines for the removal of gas, oil, coal or other minerals or timber, and other like purposes, or for the joint or common use of real estate, rights of way, facilities and equipment, that do not secure any monetary obligations and which in the aggregate do not materially impair the use of such Property for the purposes of which such Property is held by the Borrower or any Restricted Subsidiary or materially impair the value of such Property subject thereto; (g) Liens on cash or securities pledged to secure performance of tenders, surety and appeal bonds, government contracts, performance and return of money bonds, bids, trade contracts, leases, statutory obligations, regulatory obligations and other obligations of a like nature incurred in the ordinary course of business; (h) judgment and attachment Liens not giving rise to an Event of Default, provided that any appropriate legal proceedings which may have been duly initiated for the review of such judgment shall not have been finally terminated or the period within which such proceeding may be initiated shall not have expired and no action to enforce such Lien has been commenced; (i) encumbrances consisting of deed restrictions, zoning restrictions, and other similar restrictions that do not secure Debt on the use of Oil and Gas Properties, none of which, in the aggregate, materially impairs the use of such property by the Borrower or any Restricted Subsidiary in the operation of its business or materially detracts from the value of such properties, and none of which, in the aggregate, is or shall be violated in any material respect by existing proposed operations; (j) purported Liens evidenced by the filing of UCC financing statements solely as a precautionary measure in connection with operating leases of personal property; (k) Liens on cash earnest money deposited pursuant to the terms of an agreement to acquire assets used in, or Persons engaged in, the oil and gas business, as permitted by this Agreement and (l) licenses of intellectual property, none of which, in the aggregate, materially impair the operation of the business of the Borrower or any Restricted Subsidiary; provided, further that (i) Liens described in clauses (a) through (e) shall remain "Excepted Liens" only for so long as no action to enforce such Lien has been commenced and no intention to subordinate the first priority Lien granted in favor of the Collateral Agent and the Lenders is to be hereby implied or expressed by the permitted existence of such Excepted Liens and (ii) the term "Excepted Liens" shall not include any Lien securing Debt for borrowed money other than the Indebtedness.

"Excess Amount" has the meaning given such term in Section 3.04(c)(vi).

"Excess Cash" means, as of any Excess Cash Test Day the aggregate amount of all unrestricted cash and cash equivalents of the Borrower and Guarantors (other than Excluded Cash).

"Excess Cash Test Day" has the meaning given such term in Section 3.04(c)(vi).

"Excess Cash Threshold" means the greater of (a) $50,000,000 and (b) an amount equal to 10% of the Borrowing Base then in effect.

"Excluded Accounts" means (a) segregated Deposit Accounts consisting of (and the balance of which consists solely of funds set aside in connection with) payroll accounts and accounts dedicated to the payment of employee benefits or payroll tax obligations of the Borrower and its Subsidiaries (including any investment accounts relating thereto), (b) Deposit Accounts which are used solely as an escrow account or as a fiduciary or trust account or other account that is contractually required to be segregated from the other assets of the Borrower and its Subsidiaries, in each case, for the benefit of unaffiliated third parties, (c) segregated Deposit Accounts used exclusively to hold suspense amounts held for, or payable to, third-party royalty owners, working interest owners or other interest owners, and (d) other Deposit Accounts so long as the aggregate average daily maximum balance in any such other Deposit Account over a 30-day period does not at any time exceed $500,000; provided that the aggregate daily maximum balance for all such bank accounts excluded pursuant to this clause (d) on any day shall not exceed $2,000,000.

"Excluded Assets" means (a) all surface fee interests in real property and all buildings, structures, manufactured mobile homes and other improvements thereon (other than, in each case, to the extent constituting Oil and Gas Properties or as-extracted collateral), provided, that (i) the interests in all lands and Hydrocarbons situated under any such surface fee interests in real property and all buildings, structures, manufactured mobile homes and other improvements thereon are included in the definition of "Collateral" and (ii) each Credit Party agrees not to permit to exist any Lien (other than Excepted Liens) on any such building or manufactured mobile home that is owned by such Credit Party located on the Oil and Gas Properties; (b) motor vehicles and other assets subject to certificates of title, (c) any lease (other than a lease of Oil and Gas Properties), license, permit, contract, agreement or other asset or property right to the extent (and for so long as) the grant of a Lien thereon would constitute or results in (i) the abandonment, invalidation or unenforceability of any right, title or interest of any Credit Party therein or (ii) a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract, property right or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law or principles of equity), provided however, that the security interest granted under the applicable Security Instrument shall attach immediately and automatically at such time as the condition causing such abandonment, invalidation or unenforceability shall be remedied and, to the extent severable, shall attach immediately to any portion of such lease, license, contract, property rights or agreement that does not result in any of the consequences specified in clause (c), (d) the Excluded Accounts and the cash and cash equivalents held therein and (e) except as otherwise agreed between the Borrower and the Administrative Agent, (i) issued and outstanding Equity Interests of any CFC or FSHCO directly owned by the Borrower or a Guarantor and (ii) any assets of any FSHCO (or any Subsidiary thereof) or CFC (or Subsidiary thereof); provided that, up to 65% of the Equity Interests that constitute Voting Stock and 100% of the Equity Interests that do not constitute Voting Stock of any CFC or any FSHCO that are owned directly by the Credit Parties shall not be Excluded Assets; provided further, however, "Excluded Assets" shall not include any right to receive proceeds from the sale or other disposition of Excluded Assets or any Proceeds, products, substitutes or replacements of any Excluded Assets (unless such Proceeds, products, substitutes or replacements independently constitute Excluded Assets).

"Excluded Cash" means (a) any cash or cash equivalents set aside to pay in the ordinary course of business amounts of the Borrower or any of its Subsidiaries then due and owing to unaffiliated third parties and for which the Borrower or such Subsidiary has issued checks or has initiated wires or ACH transfers in order to pay such amounts or will issue checks or initiate wires or ACH transfers in the next five (5) Business Days, (b) any cash or cash equivalents of the Borrower or any Subsidiary that is held in an Excluded Account, (c) any cash or cash equivalents of the Borrower or any Subsidiary that is held for purposes of paying interest due on the Loans on the next interest payment date, (d) any cash or cash equivalents set aside to pay (i) the purchase price (including any deposit or earnest money) of any acquisition or Investment permitted hereunder that is the subject of a binding written agreement then in effect, to the extent that such purchase price is paid within five (5) Business Days after being set aside for such acquisition or Investment, or (ii) any Restricted Payment permitted under Section 9.04 that has been declared and is scheduled to be paid within thirty (30) days after the date of declaration thereof, and (e) the net cash proceeds of any incurrence of Debt permitted hereunder or any issuance of Equity Interests of the Borrower, to the extent such proceeds are held in escrow for application within sixty (60) days after the receipt thereof to a specified use permitted hereunder (including the consummation of an acquisition or Investment or the Redemption of Debt or Equity Interests) so long as, in the case of clauses (a), (c) and (d), such amounts are held in a Deposit Account that is subject to an Account Control Agreement.

"Excluded Swap Obligation" means, with respect to any Credit Party individually determined on a Credit Party by Credit Party basis, any Debt in respect of any Swap Agreement if, and solely to the extent that, all or a portion of the guarantee by such Credit Party of, or the grant by such Credit Party of a security interest to secure, such Debt in respect of any Swap Agreement (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Credit Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act at the time such guarantee or grant of a security interest becomes effective with respect to such related Debt in respect of any Swap Agreement. If any Debt in respect of any Swap Agreement arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Debt in respect of any Swap Agreement that is attributable to swaps for which such guarantee or security interest is or becomes illegal.

"Excluded Taxes" means, with respect to any Agent, any Lender (including for purposes of this definition, any Issuing Bank) or any other recipient of any payment to be made by or on account of any obligation of the Borrower or any Guarantor hereunder or under any other Loan Document, (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, Revolving Commitment or Term Loan Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan, Revolving Commitment or Term Loan (other than pursuant to an assignment request by the Borrower under Section 5.04(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 5.03(a) or (c), 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 to comply with Section 5.03(f), (g) or (h) and (d) any withholding Taxes imposed under FATCA.

"Existing Credit Agreements" means (a) that certain Credit Agreement dated as of November 1, 2023 among the Borrower, the lenders party thereto, and Fifth Third Bank, National Association, as administrative agent, collateral agent, and letter of credit issuer and (b) that certain Credit Agreement dated as of September 12, 2023 among the Borrower, the lenders party thereto, Texas Capital Bank, as administrative agent and Chambers Energy Management, LP, as collateral agent, in each case, as amended, modified, supplemented or amended and restated prior to the date hereof.

"Existing Letters of Credit" means the letters of credit listed on Schedule 2.08.

"FATCA" means Sections 1471 through 1474 of the Code, as of the Effective Date (or any amended or successor version that is 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 and any fiscal or regulatory legislation, rules or official administrative guidance adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

"Federal Funds Effective Rate" means, for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depositary institutions, as determined in such manner as shall be set forth on the NYFRB's Website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate; provided that if the Federal Funds Effective Rate as so determined would be less than 0.00%, such rate shall be deemed to be 0.00% for the purposes of this Agreement.

"Fee Letter" means collectively, (a) that certain Arranger Fee Letter dated as of October 5, 2026 among Citi, Fifth Third Bank, National Association, and the Borrower, (b) that certain Agent Fee Letter dated as of October 5, 2026 between Citi and the Borrower, and (c) each other agreement relating to the payment of fees in connection with this Agreement entered into by the Borrower and any Agent or any Arranger from time to time.

"Finance Leases" means, in respect of any Person, subject to the second proviso set forth in Section 1.05, all leases which shall have been in accordance with GAAP, recorded as capital leases or finance leases on the balance sheet of the Person liable (whether contingent or otherwise) for the payment of rent thereunder.

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

"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 any regulations promulgated thereunder, (e) the Biggert-Waters Flood Insurance Reform Act of 2012, as amended, and (f) any regulations promulgated under any of the foregoing.

"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 the Term SOFR Rate or Daily Simple SOFR, as applicable. For the avoidance of doubt the initial Floor for each of the Term SOFR Rate or Daily Simple SOFR shall be 0.00%.

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

"Foreign Subsidiary" means any Subsidiary that is not organized under the laws of the United States of America or any state thereof or the District of Columbia.

"Free Cash Flow" means, for any Rolling Period, (a) EBITDAX for such Rolling Period minus (b) the increase (or plus the decrease) in non-cash working capital of the Borrower and its Consolidated Restricted Subsidiaries during such Rolling Period minus (c) the sum, in each case without duplication, of the following amounts for such Rolling Period: (i) voluntary, mandatory and scheduled cash repayments of Debt permitted in Section 9.02 (other than the Revolving Loans or to the extent refinanced with Debt permitted hereunder) which cannot be reborrowed pursuant to the terms of such Debt, (ii) the aggregate amount actually paid by the Borrower or any of its Consolidated Restricted Subsidiaries in cash during such Rolling Period on account of capital expenditures (other than to the extent constituting an acquisition of assets or Equity Interests, in each case, to the extent financed with the proceeds of Debt permitted hereunder or the issuance of Equity Interests not constituting Disqualified Capital Stock), (iii) interest expense paid in cash during such Rolling Period by the Borrower or any of its Consolidated Restricted Subsidiaries, (iv) Taxes paid in cash during such Rolling Period by the Borrower or any of its Consolidated Restricted Subsidiaries, (v) exploration expenses paid in cash during such Rolling Period by the Borrower or any of its Consolidated Restricted Subsidiaries, (vi) Restricted Payments made in cash pursuant during such Rolling Period, (vii) Investments made in cash during such Rolling Period (other than Investments permitted under Section 9.05(g) or otherwise constituting an acquisition, in each case, to the extent financed with the proceeds of Debt permitted hereunder or the issuance of Equity Interests not constituting Disqualified Capital Stock), and (viii) to the extent not included in the foregoing and added back in the calculation of EBITDAX, any other cash charge that reduces the earnings of the Borrower and its Consolidated Restricted Subsidiaries; provided that, for purposes of the foregoing clause (c), there shall be excluded any capital expenditures, Restricted Payments, Investments, repayments of Debt or other amounts solely to the extent funded substantially concurrently with the net cash proceeds of any issuance of Equity Interests (other than Disqualified Capital Stock) of the Borrower.

"Fronting Exposure" means, at any time there is a Defaulting Lender, with respect to the Issuing Banks, such Defaulting Lender's LC Exposure other than LC Exposure as to which such Defaulting Lender's participation obligation has been reallocated to other Revolving Lenders or cash collateralized in accordance with the terms hereof.

"FSHCO" means any Subsidiary substantially all of the assets of which consist of (a) Equity Interests (including instruments treated as equity for U.S. federal income Tax purposes) and/or indebtedness of one or more (i) CFCs and/or (ii) Persons described in clause (a) of this definition and (b) cash or cash equivalents and other assets held on a temporary basis incidental to the holding of such Equity Interests or indebtedness.

"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.

"Governmental Authority" means the government of the United States of America and any subagency thereof, 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.

"Governmental Requirement" means any law, statute, code, ordinance, order, determination, rule, regulation, judgment, decree, injunction, franchise, permit, certificate, license, rules of common law, authorization or other directive or requirement, whether now or hereinafter in effect, of any Governmental Authority.

"Guarantors" means the Borrower and each Restricted Subsidiary.

"Guaranty Agreement" means a guaranty agreement executed by the Guarantors in substantially the form of Exhibit D unconditionally guarantying, on a joint and several basis, payment of the Indebtedness, as the same may be amended, modified or supplemented from time to time.

"Hazardous Material" means any substance regulated or as to which liability might arise under any applicable Environmental Law including: (a) 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 any other similar term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "TCLP toxicity" or "EP toxicity" or words of similar import under any applicable Environmental Laws); (b) petroleum products, petroleum substances, natural gas, oil, oil and gas waste, crude oil, and any components, fractions, or derivatives thereof; and (c) radioactive materials, explosives, asbestos or asbestos containing materials, polychlorinated biphenyls, per- and polyfluoroalkyl substances, radon, infectious or medical wastes.

"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 Indebtedness 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 Effective Date.

"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. Unless otherwise expressly provided herein, all references in this Agreement to "Hydrocarbon Interests" refer to Hydrocarbon Interests owned at the time in question by the Borrower and its Restricted Subsidiaries.

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

"Indebtedness" means any and all amounts owing or to be owing by the Borrower or any Restricted Subsidiary (whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising): (a) to any Agent, any Issuing Bank, or any Lender under any Loan Document, including, without limitation, all applicable fees and expenses hereunder, all obligations to pay, discharge and satisfy the Erroneous Payment Subrogation Rights, and all interest on any of the Loans (including any interest that accrues after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency or reorganization of any Credit Party (or could accrue but for the operation of applicable bankruptcy or insolvency laws), whether or not such interest is allowed or allowable as a claim in any such case, proceeding or other action); (b) to any Secured Swap Provider under any Swap Agreement including any Swap Agreement in existence prior to the Effective Date, whether or not such Person at any time ceases to be a Lender or an Affiliate of a Lender, but excluding any additional transactions or confirmations entered into after such Secured Swap Provider ceases to be a Lender or an Affiliate of a Lender; (c) to any Bank Products Provider in respect of Bank Products; and (d) all renewals, increases, extensions and/or rearrangements of any of the above; provided that solely with respect to any Credit Party that is not an "eligible contract participant" under the Commodity Exchange Act, Excluded Swap Obligations of such Credit Party shall in any event be excluded from "Indebtedness" owing by such Credit Party.7

"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 hereunder or under any Loan Document and (b) to the extent not otherwise described in clause (a) above, Other Taxes.

"Indemnitee" has the meaning set forth in Section 12.03(b).

"Information" has the meaning set forth in Section 12.11.

"Initial Financial Statements" means (a) the audited consolidated annual financial statements of the Borrower as of December 31, 2025 and (b) the unaudited consolidated quarterly financial statements of the Borrower for the fiscal quarter ended September 30, 2026.

"Initial Holder" means an initial holder of the Effective Date Preferred Equity and its Affiliates, collectively.

"Initial Reserve Report" means, collectively, the reserve reports and other reserve engineering information, effective as of June 30, 2026, provided by the Borrower to the Administrative Agent prior to the Effective Date and utilized by the Administrative Agent and the Lenders in determining the Borrowing Base in effect as of the Effective Date.

"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 (a) with respect to any ABR Loan, the last day of each March, June, September and December, and (b) with respect to any Term Benchmark Loan, the last day of each Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Term Benchmark Borrowing with an Interest Period of more than three months' duration, each day prior to the last day of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period.

"Interest Period" means with respect to any Term Benchmark Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter (in each case, subject to the availability for the Benchmark applicable to the relevant Loan or Elected Commitment), 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 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, and (c) no tenor that has been removed from this definition pursuant to Section 3.03(e) shall be available for specification in such Borrowing Request or Interest Election Request. 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 such term in Section 2.07(b).

"Interim Redetermination Date" means the date on which a Borrowing Base that has been redetermined pursuant to an Interim Redetermination becomes effective as provided in Section 2.07(d).

"Investment" means, for any Person: (a) the acquisition (whether for cash, Property, services or securities or otherwise) of Equity Interests of any other Person or any agreement to make any such acquisition (including, without limitation, any "short sale" or any sale of any securities at a time when such securities are not owned by the Person entering into such short sale); (b) the making of any deposit with, or advance, loan or capital contribution to, assumption of Debt of, purchase or other acquisition of any other Debt or equity participation or interest in, or other extension of credit to, 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, but excluding (i) any such advance, loan or extension of credit having a term not exceeding ninety (90) days representing the purchase price of inventory or supplies sold by such Person in the ordinary course of business and (ii) any aid in construction payments); (c) the purchase or acquisition (in one or a series of transactions) of Property (other than Equity Interests) of another Person that constitutes a business unit; or (d) the entering into of any guarantee of, or other contingent obligation (including the deposit of any Equity Interests to be sold) with respect to, Debt or other liability of any other Person.

"IRS" means the United States Internal Revenue Service.

"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 each of Citi, Fifth Third Bank, National Association, Bank OZK, Citizens Bank, N.A., The Huntington National Bank, KeyBank National Association, and any other Lender that, with the consent of the Borrower, agrees to act as an Issuing Bank, in their respective capacities as issuers of Letters of Credit hereunder, and each of their successors in such capacity as provided in Section 2.08(i). Each 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. 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 $20,000,000.

"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 (a) the aggregate undrawn amount of all outstanding Letters of Credit issued by the Issuing Banks at such time plus (b) 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 Revolving Lender at any time shall be its Revolving Applicable Percentage of the total LC Exposure at such time.

"LC Issuance Limit" means, with respect to each Issuing Bank, the amount set forth on Schedule 2.08 opposite such Issuing Bank's name.

"Lenders" means the Persons listed on Annex I, any Person that shall have become a party hereto pursuant to an Assignment and Assumption or any amendment or modification to this Agreement, 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. Unless the context otherwise requires, the term "Lenders" includes the Issuing Banks.

"Letter of Credit" means any standby letter of credit issued pursuant to this Agreement.

"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 the Issuing Bank relating to any Letter of Credit.

"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 but not limited to (a) the lien or security interest arising from a deed of trust, mortgage, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes or (b) production payments and the like payable out of Oil and Gas Properties. The term "Lien" shall include easements, restrictions, servitudes, permits, conditions, covenants, exceptions and reservations.

"Limited Partnership" means each of HighPeak Energy Partners, LP and HighPeak Energy Partners II, LP.

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

"Loans" means the loans made by the Lenders to the Borrower pursuant to this Agreement, including Revolving Loans and Term Loans.

"Majority Lenders" means at any time, Lenders having a total Applicable Percentage in excess of 50% (without regard to any sale by a Lender of a participation in any Loan under Section 12.04(c)); provided that the Maximum Credit Amounts of the Defaulting Lenders (if any) shall be excluded from the determination of Majority Lenders.

"Majority Revolving Lenders" means (a) Lenders holding greater than fifty percent (50%) of the total Revolving Credit Exposures (without regard to any sale by a Lender of a participation in any Loan under Section 12.04(c)), and (b) if there is no Revolving Credit Exposure is outstanding at such time, Lenders having aggregate Revolving Commitments greater than fifty percent (50%) of the Total Revolving Commitments (without regard to any sale by a Lender of a participation in any Loan under Section 12.04(c)); provided that the Revolving Commitments and the principal amount of the Revolving Loans and participation interests in Letters of Credit of the Defaulting Lenders (if any) shall be excluded from the determination of Majority Revolving Lenders.

"Majority Term Lenders" means Lenders holding greater than fifty percent (50%) of the total Term Loan Exposures (without regard to any sale by a Lender of a participation in any Loan under Section 12.04(c)); provided that the principal amount of the Term Loans of the Defaulting Lenders (if any) shall be excluded from the determination of Majority Term Lenders.

"Management Stockholders" means the directors, managers, executive officers and other members of management of the Borrower who are holders of Equity Interests of the Borrower or a Limited Partnership on the Effective Date.

"Material Acquisition" means any acquisition of Property or series of related acquisitions of Property (including by way of merger or consolidation) that involves the payment of consideration by any Credit Party in excess of $10,000,000.

"Material Adverse Effect" means a material adverse change in, or material adverse effect on (a) the assets or Property (including the Collateral and the Oil and Gas Properties evaluated in the most recent Reserve Report) of the Borrower and the Restricted Subsidiaries, taken as a whole, (b) the financial condition, business or operations of the Borrower and the Restricted Subsidiaries, taken as a whole, (c) the ability of the Borrower and the Restricted Subsidiaries, taken as a whole, to perform fully and on a timely basis their obligations under any Loan Document, or (d) the validity or enforceability of any Loan Document against each Credit Party party thereto, or the material rights and remedies of the Administrative Agent, the Collateral Agent, any Arranger, any Issuing Bank or any Lender under any Loan Document against the Credit Parties.

"Material Contract" means each contract or other written arrangement of any Credit Party (other than any Loan Document) (a) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect, (b) providing for, evidencing, securing or otherwise relating to any Material Debt, or (c) for which the aggregate yearly payments (whether to or from any such Credit Party) exceed $10,000,000 per year.

"Material Debt" means (a) any Permitted Additional Debt and any Permitted Refinancing Debt in respect thereof and (b) Debt (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 its Restricted Subsidiaries in an aggregate principal amount exceeding $25,000,000. For purposes of determining Material Debt, 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.

"Material Disposition" means any disposition of Property or series of related acquisitions of Property (including by way of merger or consolidation) that involves the payment of consideration to any Credit Party in excess of $10,000,000.

"Maximum Credit Amount" means, as to each Lender, the amount set forth opposite such Lender's name on Annex I under the caption "Maximum Credit Amounts", as the same may be (a) modified, reduced or terminated from time to time in connection with a modification, reduction or termination of the Aggregate Maximum Credit Amounts pursuant to Section 2.06, or (b) modified from time to time pursuant to any assignment permitted by Section 12.04(b).

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

"Mortgaged Property" means any Property owned by the Borrower or any Restricted Subsidiary which is subject to the Liens existing and to exist under the terms of the Security Instruments.

"Mortgages" means all mortgages, deeds of trust and similar documents, instruments and agreements creating, evidencing, perfecting or otherwise establishing the Liens on Mortgaged Property to secure payment of the Indebtedness or any part thereof in substantially the form of Exhibit H.

"Multiemployer Plan" means a multiemployer plan as defined in Section 3(37) or Section 4001(a)(3) of ERISA.

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

"Non-Consenting Lender" means any Lender that does not approve any consent, waiver or amendment that (a) (i) requires the approval of all affected Lenders or all Lenders (other than increases to the Borrowing Base) in accordance with the terms of Section 12.02 and (ii) has been approved by the Majority Lenders or (b) (i) increases in the Borrowing Base and (ii) has been approved by the Super-Majority Lenders.

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

"Notes" means the promissory notes of the Borrower described in Section 2.02(d) and being substantially in the form of Exhibit A-1 with respect to any Revolving Loans and substantially in the form of Exhibit A-2 with respect to any Term Loans, 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 shall be less than 0.00%, such rate shall be deemed to be 0.00% for purposes of this Agreement.

"NYFRB's Website" means the website of the NYFRB at http://www.newyorkfed.org, or any successor source.

"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, pooling agreements and declarations of pooled or unitized 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, contracts and other agreements, including production sharing contracts and agreements, which relate to any of the Hydrocarbon Interests or the production, sale, purchase, exchange or processing of Hydrocarbons from or attributable to such Hydrocarbon Interests; (e) all Hydrocarbons in and under and which may be produced and saved or attributable to the Hydrocarbon Interests, including all oil in tanks, and all rents, issues, profits, proceeds, products, revenues and other incomes from or attributable to the Hydrocarbon Interests; (f) all tenements, hereditaments, appurtenances and Properties in any manner appertaining, belonging, affixed or incidental to the Hydrocarbon Interests; and (g) all Properties, rights, titles, interests and estates described or referred to above, including any and all Property, real or personal, now owned or hereafter acquired and situated upon, used, held for use or useful in connection with the operating, working or development of any of such 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 oil wells, gas wells, injection wells or other wells, buildings, structures, fuel separators, liquid extraction plants, plant compressors, pumps, pumping units, field gathering systems, gas processing plants and pipeline systems and any related infrastructure to any thereof, tanks and tank batteries, fixtures, valves, fittings, machinery and parts, engines, boilers, meters, apparatus, equipment, appliances, tools, implements, cables, wires, towers, casing, tubing and rods, surface leases, rights-of-way, easements and servitudes together with all additions, substitutions, replacements, accessions and attachments to any and all of the foregoing. Unless otherwise expressly provided herein, all references in this Agreement to "Oil and Gas Properties" refer to Oil and Gas Properties owned by the Borrower and its Restricted Subsidiaries, as the context requires.

"OPA" has the meaning set forth in the definition of "Environmental Laws".

"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 Taxes" means any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes arising 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, this Agreement and any other 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(b)).

"Outbound Investment Rules" means the regulations administered and enforced, together with any related public guidance issued, by the United States Treasury Department under U.S. Executive Order 14105 of August 9, 2023, or any similar law or regulation; as of the Effective Date, and as codified at 31 C.F.R. § 850.101 et seq.

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

"Paid in Full" or "Payment in Full" means, (a) the indefeasible payment in full in cash of all outstanding Loans and LC Disbursements, together with accrued and unpaid interest thereon, (b) the termination, expiration, or cancellation and return of all outstanding Letters of Credit (other than Letters of Credit as to which arrangements satisfactory to the applicable Issuing Bank in its sole discretion have been made), (c) the indefeasible payment in full in cash of the accrued and unpaid fees payable under this Agreement or under any other Loan Document, (d) the indefeasible payment in full in cash of all reimbursable expenses and other Indebtedness (other than obligations for which no claim has been made and other obligations expressly stated to survive such payment and termination of this Agreement), (e) the termination of all Revolving Commitments, and (f) the termination of all Swap Agreements secured by the Security Instruments and Bank Products secured by the Security Instruments (other than Bank Products with Wells Fargo Bank, N.A.) or entering into other arrangements satisfactory to such Secured Swap Provider or Bank Product Provider, as applicable, in its sole discretion.

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

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

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

"Payment Recipient" has the meaning assigned to such term in Section 11.14(a).

"PBGC" means the Pension Benefit Guaranty Corporation, or any successor thereto.

"Permitted Additional Debt" means Debt of the Borrower in respect of unsecured notes; provided that (a) no Default, Event of Default or Borrowing Base Deficiency exists at the time of the incurrence of such Debt or would result therefrom (including after giving effect to any automatic reduction in the Borrowing Base pursuant to Section 2.07(f)) (provided that a Borrowing Base Deficiency shall not be deemed to result from such incurrence for purposes of this clause (a) if, on the date of such incurrence, the Borrower applies the net cash proceeds of such Debt (and/or other funds) to prepay the Loans and, if applicable, cash collateralize LC Exposure, in each case in accordance with Section 3.04(c)(iii), in an amount sufficient to eliminate such Borrowing Base Deficiency), (b) such Debt does not require any scheduled amortization of principal or have a maturity date prior to 180 days after the Revolving Maturity Date, (c) after giving effect to the incurrence of such Debt, the Borrower is in pro forma compliance with Section 9.01(a) and Section 9.01(b), (d) the covenants and events of default contained in the documentation governing such Debt (i) do not contain any maintenance financial covenants (unless (1) any such covenant is no more restrictive than any maintenance financial covenant included in this Agreement, (2) the maintenance financial covenants in this Agreement are made as restrictive as any such covenant or (3) such maintenance financial covenants are added to this Agreement) and (ii) in the case of other covenants and events of default, taken as a whole, are not more restrictive than the corresponding terms of this Agreement and the other Loan Documents (in the case of the preceding clauses (i) and (ii), as determined in good faith by the Borrower) (unless the covenants and events of default included in this Agreement and other Loan Documents are made at least as restrictive as such other covenants and events of default, as applicable), (e) the documents governing such Debt do not contain any mandatory prepayment or Redemption provisions (other than customary change of control, asset sale tender offer or excess cash flow provisions) which would require a mandatory prepayment or Redemption of such Debt in priority to the Loans, (f) such Debt is not guaranteed by any Persons that are not Guarantors hereunder, and (g) such Debt does not prohibit prior repayment of the Indebtedness.

"Permitted Holder" means (a)(i) John Paul DeJoria, (ii) the John Paul DeJoria Family Trust, (iii) any immediate family member of John Paul DeJoria and (iv) the estate or legal representative of the estate of John Paul DeJoria and/or any immediate family members of John Paul DeJoria (acting in the capacity of such legal representative), (b) (i) HighPeak Energy Partners, LP, so long as one or more Management Stockholders remains the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under such Act), directly or indirectly, of more than fifty percent (50%) of outstanding Voting Stock of HighPeak Energy Partners, LP, and (ii) HighPeak Energy Partners II, LP so long as one or more Management Stockholders remains the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under such Act), directly or indirectly, of more than fifty percent (50%) of outstanding Voting Stock of HighPeak Energy Partners II, LP., (c) any Initial Holder and (d) any Affiliate funds, investments vehicles, holding companies, trusts, partnerships, limited liability companies, corporations or other entities beneficially majority owned and controlled by one or more Persons in clauses (a), (b) or (c) of this definition.

"Permitted Refinancing Debt" means an extension, refinancing, or renewal of any of the Permitted Additional Debt; provided that (a) such Debt satisfies the conditions set forth in the definition of Permitted Additional Debt, (b) the principal amount of such Debt constituting Permitted Refinancing Debt is not greater than the Permitted Additional Debt subject of such extension, refinancing, or renewal (other than by the costs, fees, premiums and expenses and by accrued and unpaid interest paid in connection with any such extension, refinancing or renewal), (c) such extension, refinancing or renewal does not result in any principal amount owing in respect of such Debt becoming due earlier than the date that is 180 days after the Maturity Date, and (d) the proceeds of such Debt is applied solely to refinance or repay all or a portion of the Permitted Additional Debt subject of such extension, refinancing, or renewal and the costs, fees, premiums and expenses and accrued and unpaid interest paid in connection with any such extension, refinancing or renewal.

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

"Plan" means any employee pension benefit plan, as defined in section 3(2) of ERISA, which (a) is currently or hereafter sponsored, maintained or contributed to by the Borrower, a Restricted Subsidiary or, solely with respect to a plan subject to Title IV of ERISA, an ERISA Affiliate or (b) was at any time during the six calendar years preceding the Effective Date, sponsored, maintained or contributed to by the Borrower, a Restricted Subsidiary or, solely with respect to a plan subject to Title IV of ERISA, an ERISA Affiliate.

"Pledge and Security Agreement" means a Pledge and Security Agreement among each Credit Party and the Collateral Agent in substantially the form of Exhibit E (or otherwise in form and substance reasonably acceptable to the Collateral Agent) granting Liens and security interests in the Equity Interests of the Subsidiaries owned by such Credit Parties and the Credit Parties' other personal property constituting Collateral (as defined therein) in favor of the Collateral Agent for the benefit of the Secured Parties to secure the Indebtedness, as the same may be amended, modified, supplemented or restated from time to time.

"Prime Rate" means, at any time, the rate of interest per annum publicly announced from time to time by Citi as its prime rate. Each change in the Prime Rate shall be effective as of the opening of business on the day such change in such prime rate occurs. The parties hereto acknowledge that the rate announced publicly by Citi as its prime rate is an index or base rate and shall not necessarily be its lowest or best rate charged to its customers or other banks.

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, including, without limitation, cash, securities, accounts and contract rights.

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

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

"Proved Developed Producing Reserves" means "proved developed producing oil and gas reserves" as such term is defined in 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.

"Proved Reserves" means collectively, "proved oil and gas reserves," "proved developed producing oil and gas reserves," "proved developed non-producing oil and gas reserves" (consisting of proved developed shut-in oil and gas reserves and proved developed behind pipe oil and gas reserves), and "proved undeveloped oil and gas reserves," as such terms are defined in 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.

"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.

"Purchase Money Debt" means Debt, the proceeds of which are used to finance the acquisition, construction, or improvement of inventory, equipment or other property in the ordinary course of business; provided that such Debt is incurred no later than 180 days after such acquisition or the completion of such construction or improvement.

"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 assigned to it in Section 12.18.

"Qualified ECP Guarantor" means, in respect of any Swap Agreement, each Credit Party that (a) has total assets exceeding $10,000,000 at the time any guaranty of obligations under such Swap Agreement or grant of the relevant security interest to secure such Swap Agreement becomes effective or (b) otherwise constitutes an "eligible contract participant" 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.

"RCRA" has the meaning set forth in the definition of "Environmental Laws".

"Recipient" has the meaning set forth in Section 5.01(a).

"Redemption" means with respect to any Debt, 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 Debt. "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 the Term SOFR Rate, 5:00 a.m. (Houston time) on the day that is two U.S. Government Securities Business Days preceding the date of such setting, (2) if following a Benchmark Transition Event and a Benchmark Replacement Date with respect to the Term SOFR Rate such Benchmark is Daily Simple SOFR, then four U.S. Government Securities Business Days prior to such setting, or (3) if such Benchmark is none of the Term SOFR Rate or Daily Simple SOFR, the time determined by the Administrative Agent in its reasonable discretion.

"Register" has the meaning assigned 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.

"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, migrating, injecting, escaping, leaching, dumping, or disposing.

"Relevant Governmental Body" means the Board and/or the NYFRB, or a committee officially endorsed or convened by the Board and/or the NYFRB or, in each case, any successor thereto.

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

"Required Lenders" means at any time, Lenders having a total Applicable Percentage in excess of 66 2/3% (without regard to any sale by a Lender of a participation in any Loan under Section 12.04(c)); provided that the Maximum Credit Amount of the Defaulting Lenders (if any) shall be excluded from the determination of Required Lenders.

"Reserve Report" means a 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) the crude oil, natural gas and natural gas liquid reserves attributable to the Oil and Gas Properties constituting Proved Reserves located within the geographic boundaries of the United States of America of the Credit Parties that are Qualified ECP Guarantors, 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 SEC reporting requirements at the time and reflecting Swap Agreements in place with respect to such production.

"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 Chief Executive Officer, the President, any Financial Officer or any Vice President of such Person. Unless otherwise specified, all references to a Responsible Officer herein shall mean a Responsible Officer of the Borrower.

"Restricted Payment" means (a) any dividend or other distribution (whether in cash, securities or other Property) with respect to any Equity Interests in the Borrower or any of its Restricted Subsidiaries, or any payment (whether in cash, securities or other Property), including any sinking fund or similar deposit, on account of the purchase, Redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in the Borrower or any of its Restricted Subsidiaries or any option, warrant or other right to acquire any such Equity Interests in the Borrower or any of its Restricted Subsidiaries and (b) any payment of management fees, advisory fees or similar fees by the Borrower or any Restricted Subsidiary to any holders of their Equity Interests or any Affiliates thereof.

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

"Revolving Applicable Percentage" means, with respect to any Revolving Lender, an amount equal to the percentage of the Aggregate Maximum Credit Amounts less any Term Loan Exposure represented by such Revolving Lender's Maximum Credit Amount less its Term Loan Exposure as such percentage is set forth on Annex I; provided that in the case of Section 2.09 when a Defaulting Lender shall exist, "Revolving Applicable Percentage" as used in such Section 2.09 shall mean the percentage of the Aggregate Maximum Credit Amounts less Term Loan Exposure (disregarding any Defaulting Lender's Maximum Credit Amounts and such Defaulting Lender's Term Loan Exposure) represented by such Revolving Lender's Maximum Credit Amount.

"Revolving Borrowing Base" means, at any time, the Borrowing Base then in effect minus the total Term Loan Exposure at such time.

"Revolving Borrowing Base Utilization Percentage" means, as of any day, the fraction expressed as a percentage, the numerator of which is the Revolving Credit Exposures of the Revolving Lenders on such day, and the denominator of which is the Revolving Borrowing Base in effect on such day; provided that if the Revolving Borrowing Base Utilization Percentage on such day as so determined would result in an undefined quotient, then the Revolving Borrowing Base Utilization Percentage shall be deemed to be greater than 90% for purposes of determining the Applicable Margin.

"Revolving Commitment" means, with respect to each Revolving Lender, the commitment of such Revolving Lender to make Revolving Loans and to acquire participations in Letters of Credit hereunder, which shall at any time be the least of (a) such Revolving Lender's Maximum Credit Amount minus such Revolving Lender's Term Loan Exposure, (b) such Revolving Lender's Elected Commitment, and (c) such Revolving Lender's Revolving Applicable Percentage of the Revolving Borrowing Base.

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

"Revolving Lender" means a Lender with a Revolving Commitment or Revolving Credit Exposure.

"Revolving Loan" means any revolving loan made to the Borrower pursuant to Article II, and "Revolving Loans" means, collectively, two or more such revolving loans, as the context requires.

"Revolving Loan Limit" means the least of (i) the Aggregate Maximum Credit Amounts then in effect minus the total Term Loan Exposure of all Lenders, (ii) the Revolving Borrowing Base then in effect, and (iii) the Aggregate Elected Commitment Amounts then in effect.

"Revolving Maturity Date" means November 20, 2030.

"Rolling Period" means any period of four (4) consecutive fiscal quarters ending on the last day of such applicable fiscal quarter.

"S&P" means Standard & Poor's Ratings Group, a division of The McGraw-Hill Companies, Inc., 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 comprehensive Sanctions (as of the Effective Date, the so-called Donetsk People's Republic, the so-called Luhansk People's Republic, the Crimea Region of Ukraine, Cuba, Iran, North Korea, and the non-government-controlled Kherson and Zaporizhzhia regions of Ukraine).

"Sanctioned Person" means, at any time, (a) any Person listed in any Sanctions-related list of blocked or restricted Persons maintained by the U.S. Department of the Treasury, the U.S. Department of State, or the U.S. Department of Commerce, or by the United Nations Security Council, the European Union, any European Union member state, or His Majesty's Treasury of the United Kingdom, (b) any Person operating, organized or resident in a Sanctioned Country, or (c) any Person owned 50% or more, in the aggregate, or otherwise controlled (as such term is defined by applicable Sanctions) by any such Person or Persons described in the foregoing clauses (a) or (b) (as ownership and control may be defined and/or established in and/or by any applicable Sanctions).

"Sanctions" means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, the U.S. Department of Commerce, or the United Nations Security Council, the European Union, any European Union member state, or His Majesty's Treasury of the United Kingdom.

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

"Scheduled Redetermination Date" means the date on which a Borrowing Base that has been redetermined pursuant to a Scheduled Redetermination becomes effective as provided in Section 2.07(d).

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

"Secured Parties" means, collectively, the Agents, the Lenders, the Issuing Banks, the Bank Products Providers and Secured Swap Providers, and "Secured Party" means any of them individually.

"Secured Swap Provider" means any Person who at the time of entering into a Swap Agreement with a Credit Party is a Lender or an Affiliate of a Lender (or, with respect to any Swap Agreement with a Credit Party existing on the Effective Date, was a "Lender" or an "Affiliate" of a "Lender" on the Effective Date).

"Securities Account" shall have the meaning set forth in Article 8 of the UCC.

"Security Instruments" means the Guaranty Agreement, the Pledge and Security Agreement, the Mortgages, the Account Control Agreements, the UCC financing statements and other agreements, instruments or certificates described or referred to in Exhibit C, and any and all other Mortgages, Account Control Agreements, UCC financing statements, agreements, instruments, consents or certificates now or hereafter executed and delivered by the Borrower or any other Person (other than Swap Agreements with the Secured Swap Providers) in connection with, or as security for the payment or performance of the Indebtedness, the Notes, this Agreement, or reimbursement obligations under the Letters of Credit, as such agreements or instrument may be amended, modified, supplemented or restated from time to time.

"SOFR" means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

"SOFR Administrator" means the NYFRB (or a successor administrator of the secured overnight financing rate).

"SOFR Administrator's Website" means the NYFRB's Website, 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.

"SOFR Determination Date" has the meaning specified in the definition of "Daily Simple SOFR."

"SOFR Rate Day" has the meaning specified in the definition of "Daily Simple SOFR."

"Stockholders' Equity" means, at any date, the total stockholders' equity of the Borrower.

"Subsidiary" means, with respect to any Person (the "Parent") at any date, any other Person the accounts of which would be consolidated with those of the Parent in the Parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other Person (a) of which Equity Interests representing more than 50% of the equity or more than 50% of the ordinary voting power (irrespective of whether or not at the time Equity Interests of any other class or classes of such Person shall have or might have voting power by reason of the happening of any contingency) or, in the case of a partnership, any general partnership interests are, as of such date, owned, controlled or held, or (b) the management decisions of which, as of such date, are otherwise controlled, in each case, directly, indirectly through one or more intermediaries, or both, by the Parent. Unless otherwise specified, each reference to "Subsidiary" shall mean a Subsidiary of a Credit Party.

"Super-Majority Lenders" means at any time, Lenders having a total Applicable Percentage in excess of 85% (without regard to any sale by a Lender of a participation in any Loan under Section 12.04(c)); provided that the Maximum Credit Amounts of the Defaulting Lenders (if any) shall be excluded from the determination of Super-Majority Lenders.

"Supported QFC" has the meaning assigned to it in Section 12.18.

"Swap Agreement" means any agreement with respect to any swap, forward, collar, future or derivative transaction or option or similar agreement, whether exchange traded, "over-the-counter" or otherwise (for the avoidance of doubt, including on a prepaid basis), involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, 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 (including any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act); 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 its Restricted Subsidiaries shall be a Swap Agreement.

"Swap PV" means, with respect to any Swap Agreement in respect of commodities, 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 based on the Administrative Agent's then current internal bank price deck; provided, that the "Swap PV" shall never be less than $0.00.

"Swap Termination Value" means, in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements, (a) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s) and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Agreements, as determined by the counterparties to such Swap Agreements.

"Synthetic Leases" means, in respect of any Person, all leases which shall have been, or should have been, in accordance with GAAP, treated as operating leases on the financial statements of the Person liable (whether contingently or otherwise) for the payment of rent thereunder and which were properly treated as indebtedness for borrowed money for purposes of United States federal income taxes, if the lessee in respect thereof is obligated to either purchase for an amount in excess of, or pay upon early termination an amount in excess of, 80% of the residual value of the Property subject to such operating lease upon expiration or early termination of such lease.

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

"Term Applicable Percentage" means, with respect to any Term Lender, an amount equal to the percentage of the total Term Loan Exposure of all Lenders (or, with respect to the Effective Date prior to the funding of any Term Loan, the total Term Loan Commitments) represented by such Term Lender's Term Loan Exposure (or, with respect to the Effective Date prior to the funding of any Term Loan, such Term Lender's Term Loan Commitment), as such percentage is set forth on Annex I.

"Term Benchmark" when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Term SOFR Rate.

"Term Lender" means a Lender with a Term Loan Commitment or Term Loan Exposure.

"Term Loan" means the term loans made to the Borrower by the Term Lenders on the Effective Date pursuant to Article II, or any portion thereof, as the context requires.

"Term Loan Commitment" means, as to each Term Lender, the amount set forth opposite such Term Lender's name on Annex I under the caption "Term Loan Commitment", as the same may be reduced or otherwise modified from time to time pursuant to Section 2.01(b) or any assignment permitted by Section 12.04(b). The aggregate amount of the Term Loan Commitments as of the Effective Date and prior to any Borrowing hereunder is $50,000,000.

"Term Loan Exposure" means, with respect to any Lender at any time, the outstanding principal amount of such Lender's Term Loans.

"Term Maturity Date" means November 20, 2027.

"Term SOFR Determination Day" has the meaning assigned to it under the definition of Term SOFR Reference Rate.

"Term SOFR Rate" means with respect to any Term Benchmark Borrowing and for any tenor comparable to the applicable Interest Period, the Term SOFR Reference Rate at approximately 5:00 a.m., Houston time, two U.S. Government Securities Business Days prior to the commencement of such tenor comparable to the applicable Interest Period, as such rate is published by the CME Term SOFR Administrator; provided that if the Term SOFR Rate as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement and the other Loan Documents.

"Term SOFR Reference Rate" means, for any day and time (such day, the "Term SOFR Determination Day"), with respect to any Term Benchmark Borrowing denominated in dollars and for any tenor comparable to the applicable Interest Period, the rate per annum determined by the CME Term SOFR Administrator and identified by the Administrative Agent as the forward-looking term rate based on SOFR. If by 5:00 pm (New York City time) on such Term SOFR Determination Day, the "Term SOFR Reference Rate" for the applicable tenor has not been published by the CME Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Rate has not occurred, then, so long as such day is otherwise a U.S. Government Securities Business Day, the Term SOFR Reference Rate for such Term SOFR Determination Day will be the Term SOFR Reference Rate as published in respect of the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate was published by the CME Term SOFR Administrator, so long as such first preceding U.S. Government Securities Business Day is not more than five (5) U.S. Government Securities Business Days prior to such Term SOFR Determination Day.

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

"Total Capitalization" means, at any date, the sum of (a) Total Debt and (b) Stockholders' Equity as of such date.

"Total Debt" means, as of any date of determination, the aggregate amount of Debt of the Borrower and its Consolidated Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP. Notwithstanding the foregoing, "Total Debt" of any such Person shall not include (i) contingent obligations in respect of undrawn letters of credit (whether standby, commercial or trade), bank guarantees, bankers' acceptances, surety, performance, bid, appeal, customs and completion bonds, and performance and completion guarantees, or any similar instruments (ii) obligations under Swap Agreements and (iii) obligations under or in respect of the Effective Date Preferred Equity so long as such obligations are not classified as debt under GAAP and no mandatory Redemption payment is then due.

"Total Net Debt" means, as of any date of determination, (a) Total Debt minus (b) Unrestricted Cash held by the Credit Parties in Deposit Accounts subject to an Account Control Agreement, in an aggregate amount under this clause (b) not exceeding the greater of $50,000,000 and 10% of the Borrowing Base on such date.

"Total Revolving Commitments" is the aggregate amount of the Revolving Commitments of all the Revolving Lenders.

"Transactions" means (a) with respect to the Borrower, the execution, delivery and performance by the Borrower of this Agreement and each other Loan Document to which it is a party, the borrowing of Loans, the use of the proceeds thereof and the issuance (or deemed issuance) of Letters of Credit hereunder, and the grant of Liens by the Borrower on its Properties (including Mortgaged Properties) pursuant to the Security Instruments, and (b) with respect to each Guarantor, the execution, delivery and performance by such Guarantor of each Loan Document to which it is a party, the guaranteeing of the Indebtedness and the other obligations under the Guaranty Agreement by such Guarantor and such Guarantor's grant of Liens on its Properties (including Mortgaged Properties) pursuant to the Security Instruments.

"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 Adjusted Reference Rate or the Term SOFR 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 Collateral Agent's or any Secured Party's Lien on any Collateral.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from 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.

"Unrestricted Subsidiary" means (a) all Foreign Subsidiaries and (b) any other Subsidiary of the Borrower designated as such on Schedule 7.13 or which the Borrower has designated in writing to the Administrative Agent to be an Unrestricted Subsidiary pursuant to Section 9.20.

"Unused Availability" means at any time an amount equal to (a) the Revolving Loan Limit at such time minus (b) the aggregate Revolving Credit Exposure of all Revolving Lenders at such time.

"U.S. Government Securities Business Day" means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"U.S. Person" means for purposes of Section 7.31 and Section 9.24 hereof, any United States citizen, lawful permanent resident, entity organized under the laws of the United States or any jurisdiction within the United States, including any foreign branch of any such entity, or any Person in the United States and (b) for all other purposes, any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"U.S. Special Resolution Regime" has the meaning assigned to it in Section 12.18.

"U.S. Tax Compliance Certificate" has the meaning assigned such term in Section 5.03(f)(ii)(B)(3).

"Voting Stock" of any Person as of any date means the Equity Interests of such Person that is at the time entitled to vote in the election of the board of directors or other governing body of such Person; provided that with respect to a limited partnership or other entity that does not have a board of directors or other governing body, Voting Stock means the Equity Interests of the general partner of such limited partnership or other business entity with the ultimate authority to manage the business and operations of such Person.

"Wholly-Owned Subsidiary" means any Restricted Subsidiary of which all of the outstanding Equity Interests (other than any directors' qualifying shares mandated by applicable law), on a fully-diluted basis, are owned by the Borrower or one or more of the Wholly-Owned Subsidiaries or are owned by the Borrower and one or more of the Wholly-Owned Subsidiaries.

"Withholding Agent" means any Credit Party 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 "Term Benchmark Loan" or a "Term Benchmark Borrowing").

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 "will" as used in this Agreement shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented, restated 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 as used in this Agreement, 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" as used in this Agreement means "from and including" and the word "to" means "to and including," and (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. 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. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all determinations with respect to accounting matters hereunder shall be made, and all financial statements and certificates and reports as to financial matters required to be furnished to the Administrative Agent or the Lenders hereunder shall be prepared, in accordance with GAAP, applied on a basis consistent with the Initial Financial Statements except for changes in which Borrower's independent certified public accountants concur and which are disclosed to Administrative Agent on the next date on which financial statements are required to be delivered to the Lenders pursuant to Section 8.01(a); provided that, unless the Borrower and the Majority Lenders shall otherwise agree in writing, no such change shall modify or affect the manner in which compliance with the covenants contained herein is computed such that all such computations shall be conducted utilizing financial information presented consistently with prior periods; provided further that all obligations of any Person that are or would have been treated as operating leases for purposes of GAAP prior to the effectiveness of FASB ASC 842 shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations of this Agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with FASB ASC 842 (on a prospective or retroactive basis or otherwise) to be treated as obligations under a Finance Lease in the financial statements. Notwithstanding anything herein to the contrary, for the purposes of calculating any of the ratios tested under Section 9.01, and the components of each of such ratios, all Unrestricted Subsidiaries and their respective subsidiaries (including their assets, liabilities, income, losses, cash flows, and the elements thereof) shall be excluded, except for any cash dividends or distributions actually paid in cash by any such Person or any of its subsidiaries to the Borrower or any Restricted Subsidiary, which shall be deemed to be income to the Borrower or such Restricted Subsidiary when actually received by it.

Section 1.06. 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 on the first date of its existence by the holders of its Equity Interests at such time.

Section 1.07. Interest Rates; Benchmark Notification. The interest rate on a Loan denominated in dollars may be derived from an interest rate benchmark that may be discontinued or is, or may in the future become, the subject of regulatory reform. Upon the occurrence of a Benchmark Transition Event, Section 3.03(b) provides a mechanism for determining an alternative rate of interest. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission, performance or any other matter related to any interest rate used in this Agreement, or with respect to any alternative or successor rate thereto, or replacement rate thereof, 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 existing interest rate being replaced or have the same volume or liquidity as did any existing interest rate prior to its discontinuance or unavailability. The Administrative Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate used in this Agreement or any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any interest rate used in this Agreement, any component thereof, or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

ARTICLE II.

THE CREDITS

Section 2.01. Commitments.

(a) Subject to the terms and conditions set forth herein, each Revolving Lender severally agrees to make Revolving Loans to the Borrower during the Availability Period in an aggregate principal amount that will not result in (i) such Revolving Lender's Revolving Credit Exposure exceeding such Revolving Lender's Revolving Commitment or (ii) the total Revolving Credit Exposures exceeding the Revolving Loan Limit then in effect. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, repay and reborrow the Revolving Loans.

(b) Subject to the terms and conditions set forth herein, each Term Lender severally agrees to make a Term Loan to the Borrower on the Effective Date in an aggregate principal amount that will not result in (i) the amount of the Term Loan made by such Term Lender hereunder exceeding such Term Lender's Term Loan Commitment or (ii) the aggregate amount of the Term Loans made by all Term Lenders hereunder exceeding the total Term Loan Commitments. Once borrowed, the Borrower may not reborrow any portion of the Term Loans that has been repaid or prepaid, whether in whole or in part. Upon any funding of any Term Loan hereunder by any Term Lender, such Term Lender's Term Loan Commitment shall terminate immediately and without further action in an amount equal to, and on the date of, such funding of such portion of such Term Loan.

Section 2.02. Loans and Borrowings.

(a) Borrowings; Several Obligations.

(i) Each Revolving Loan shall be made as part of a Borrowing consisting of Revolving Loans made by the Revolving Lenders ratably in accordance with their respective Revolving Commitments. The failure of any Revolving Lender to make any Revolving Loan required to be made by it shall not relieve any other Revolving Lender of its obligations hereunder; *provided* that the Revolving Commitments are several and no Revolving Lender shall be responsible for any other Revolving Lender's failure to make Revolving Loans as required.

(ii) Each Term Loan shall be made as part of a Borrowing consisting of Term Loans made by the Term Lenders in an amount equal to each Term Lender's Term Loan Commitment. The failure of any Term Lender to make any Term Loan required to be made by it shall not relieve any other Term Lender of its obligations hereunder; *provided that* the Term Loan Commitments are several and no Term Lender shall be responsible for any other Term Lender's failure to make Term Loans as required.

(b) Types of Loans. Subject to Section 3.03, each Borrowing shall be comprised entirely of ABR Loans or Term Benchmark Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Term Benchmark 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 and any such Affiliate shall comply with the obligations of Section 5.03(f) and (g).

(c) Minimum Amounts; Limitation on Number of Borrowings. At the commencement of each Interest Period for any Term Benchmark Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of $100,000 and not less than $500,000. At the time that each ABR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of $100,000 and not less than $500,000; provided that an ABR Borrowing may be in an aggregate amount that is equal to the entire unused balance of the Total Revolving Commitments 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 may be outstanding at the same time, provided that there shall not at any time be more than (a) ten Term Benchmark Borrowings outstanding with respect to Borrowings of Revolving Loans and (b) three Term Benchmark Borrowings outstanding with respect to the Borrowing of the Term Loans. 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 Revolving Maturity Date or Term Maturity Date, as applicable.

(d) Notes. If requested by a Lender, the Loans made by such Lender shall be evidenced by a single promissory note of the Borrower in substantially the form of Exhibit A-1 with respect to Revolving Loans and in substantially the form of Exhibit A-2 with respect to Term Loans, in each case, dated, in the case of (i) any Lender party hereto as of the Effective Date, as of the Effective Date, (ii) any Lender that becomes a party hereto pursuant to an Assignment and Assumption or amendment or other modification to this Agreement, as of the effective date of the Assignment and Assumption, amendment or other modification, as applicable, or (iii) in the case of any Lender that becomes a party hereto in connection with an increase in the Aggregate Elected Commitment Amounts pursuant to Section 2.06(c), as of the effective date of such increase, in each case, payable to such Lender or its registered assigns in a principal amount equal to (A) with respect to a Revolving Lender, its Maximum Credit Amount minus the greater of its Term Loan Commitment as in effect on such date or its Term Loan Exposure, and (B) with respect to a Term Lender, the principal amount of its Term Loans on such date and, in each case, otherwise duly completed. In the event that any Lender's Maximum Credit Amount or any Lender's Elected Commitment, as applicable, increases or decreases for any reason, the Borrower shall deliver or cause to be delivered, to the extent such Lender requests a new Note, on the effective date of such increase or decrease, a new Note in substantially the form of Exhibit A-1 payable to such Lender or its registered assigns in a principal amount equal to its Maximum Credit Amount *less* its Term Loan Exposure or its Elected Commitment, as applicable, after giving effect to such increase or decrease, and otherwise duly completed. In the event that the principal amount of any Term Lender's Term Loans outstanding increases for any reason, the Borrower shall deliver or cause to be delivered, to the extent such Term Lender requests a new Note, on the effective date of such increase, a new Note in substantially the form of Exhibit A-2 payable to such Term Lender or its registered assigns in a principal amount equal to the principal amount of its Term Loans then outstanding after giving effect to such increase and otherwise duly completed. The date, amount, 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(s). Failure to make any such recordation 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(s).

Section 2.03. Requests for Borrowings. To request a Borrowing, the Borrower shall notify the Administrative Agent of such request in writing via email (a) in the case of a Term Benchmark Borrowing, not later than 10:00 a.m., Houston, Texas time, three Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 10:00 a.m., Houston, Texas time, on the date of the proposed Borrowing; provided that no such notice shall be required for any deemed request of an ABR Borrowing to finance the reimbursement of an LC Disbursement as provided in Section 2.08(e). Each such Borrowing Request shall be irrevocable and shall be substantially in the form approved by the Administrative Agent and separately provided to the Borrower. Each such Borrowing Request shall specify the following information in compliance with Section 2.02:

(i) the aggregate amount of the requested Borrowing;

(ii) whether such Borrowing shall be a Borrowing of Revolving Loans or Term Loans; provided that after the initial Borrowings on the Effective Date, the Borrower may only request Revolving Loans;

(iii) the date of such Borrowing, which shall be a Business Day;

(iv) whether such Borrowing is to be an ABR Borrowing or a Term Benchmark Borrowing;

(v) in the case of a Term Benchmark Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period";

(vi) the amount of the then effective Borrowing Base, the amount of the then effective Aggregate Elected Commitment Amounts, the current total Revolving Credit Exposures (without regard to the requested Borrowing), the total Revolving Credit Exposures on a pro forma basis (giving effect to the requested Borrowing) and the total Term Loan Exposures; and

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 an ABR Borrowing. If no Interest Period is specified with respect to any requested Term Benchmark Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Each Borrowing Request shall constitute a representation by the Borrower that the amount of the requested Borrowing shall not cause (x) the total Revolving Credit Exposures to exceed the Revolving Loan Limit, or (y) the principal amount of the total outstanding Term Loans to exceed the Term Loan Commitments.

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 Term Benchmark Borrowing, 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 Term Benchmark Borrowing, 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 by a written Interest Election Request delivered via e-mail 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 Interest Election Request shall be irrevocable and shall be substantially in the form approved by the Administrative Agent and separately provided to the Borrower.

(c) Information in Interest Election Requests. Each Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies, including if such Borrowing is of a Revolving Loan or a Term Loan, 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 effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Term Benchmark Borrowing; and

(iv) if the resulting Borrowing is a Term Benchmark Borrowing, 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".

If any such Interest Election Request requests a Term Benchmark Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one 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 Term Benchmark Borrowing 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 an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing: (i) no outstanding Borrowing may be converted to or continued as a Term Benchmark Borrowing (and any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Term Benchmark Borrowing shall be ineffective) and (ii) unless repaid, each Term Benchmark Borrowing shall be converted to an ABR Borrowing 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 2:00 p.m., Houston, Texas 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 an account of the Borrower 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 (i) in the case of such Lender, 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 or (ii) 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.

Section 2.06. Termination and Reduction of Aggregate Maximum Credit Amounts; Increase, Reduction and Termination of Aggregate Elected Commitment Amounts.

(a) Scheduled Termination of Commitments.

(i) Unless previously terminated, the Revolving Commitments shall terminate on the Revolving Maturity Date. If at any time the Aggregate Maximum Credit Amounts, the Borrowing Base or the Aggregate Elected Commitment Amounts is terminated or reduced to zero, then the Revolving Commitments shall terminate on the effective date of such termination or reduction.

(ii) Notwithstanding anything to the contrary herein, the Term Loan Commitments that are funded on the Effective Date shall be terminated upon such funding and, if the total Term Loan Commitment as of the Effective Date is not drawn on the Effective Date, any Term Loan Commitments in respect of the undrawn amount shall automatically be cancelled.

(b) Optional Termination and Reduction of Aggregate Maximum Credit Amounts.

(i) The Borrower may at any time terminate, or from time to time reduce, the Aggregate Maximum Credit Amounts; provided that (A) each reduction of the Aggregate Maximum Credit Amounts shall be in an amount that is an integral multiple of $1,000,000 and not less than $5,000,000, (B) the Borrower shall not terminate or reduce the Aggregate Maximum Credit Amounts if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 3.04(c), the total Revolving Credit Exposures would exceed the then effective Revolving Loan Limit, and (C) upon any reduction of the Aggregate Maximum Credit Amounts that would otherwise result in the Aggregate Maximum Credit Amounts being less than the sum of the Aggregate Elected Commitment Amounts plus the total Term Loan Exposure, the Aggregate Elected Commitment Amounts shall be automatically reduced (ratably among the Revolving Lenders in accordance with each Revolving Lender's Revolving Applicable Percentage) so that they equal the Aggregate Maximum Credit Amounts as so reduced minus the total Term Loan Exposure.

(ii) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Aggregate Maximum Credit Amounts under Section 2.06(b)(i) at least three 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 Revolving Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section 2.06(b)(ii) shall be irrevocable; provided that a notice of termination of the Aggregate Maximum Credit Amounts delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, a Change in Control or other applicable event, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Aggregate Maximum Credit Amounts shall be permanent and may not be reinstated. Each reduction of the Aggregate Maximum Credit Amounts shall be made ratably among the Lenders in accordance with each Lender's Applicable Percentage.

(c) Increases, Reductions and Terminations of Aggregate Elected Commitment Amounts.

(i) Subject to the conditions set forth in Section 2.06(c)(ii), the Borrower may increase the Aggregate Elected Commitment Amounts then in effect by increasing the Elected Commitment of a Revolving Lender or by causing a Person that is acceptable to the Administrative Agent that at such time is not a Revolving Lender to become a Revolving Lender (any such Person that is not at such time a Revolving Lender and becomes a Revolving Lender, an "Additional Lender"). Notwithstanding anything to the contrary contained in this Agreement, in no case shall an Additional Lender be the Borrower, an Affiliate of the Borrower, or a natural person.

(ii) Any increase in the Aggregate Elected Commitment Amounts shall be subject to the following additional conditions:

(A) such increase shall not be less than $10,000,000 unless the Administrative Agent otherwise consents, and no such increase shall be permitted if after giving effect thereto the Aggregate Elected Commitment Amounts exceed (1) the Revolving Borrowing Base then in effect or (2) an amount equal to the Aggregate Maximum Credit Amounts minus total Term Loan Exposure;

(B) following any Scheduled Redetermination Date, the Borrower may not increase the Aggregate Elected Commitment Amounts more than once before the next Scheduled Redetermination Date (for the sake of clarity, all increases in the Aggregate Elected Commitment Amounts effective on a single date shall be deemed a single increase in the Aggregate Elected Commitment Amounts for purposes of this Section 2.06(c)(ii)(B));

(C) no Default shall have occurred and be continuing on the effective date of such increase;

(D) on the effective date of such increase, no Term Benchmark Borrowings shall be outstanding or if any Term Benchmark Borrowings are outstanding, then the effective date of such increase shall be the last day of the Interest Period in respect of such Term Benchmark Borrowings unless the Borrower pays any compensation required by Section 5.02;

(E) no Revolving Lender's Elected Commitment may be increased without the consent of such Revolving Lender;

(F) if the Borrower elects to increase the Aggregate Elected Commitment Amounts by increasing the Elected Commitment of a Revolving Lender, the Borrower and such Revolving Lender shall execute and deliver to the Administrative Agent a certificate substantially in the form of Exhibit J (an "Elected Commitment Increase Certificate"); and

(G) if the Borrower elects to increase the Aggregate Elected Commitment Amounts 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 K (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 one or more Notes substantially in the form of Exhibit A-1 and Exhibit A-2, as applicable, payable to such Additional Lender or its registered assigns in accordance with Section 2.02(d) and (2) pay any applicable fees as may have been agreed to between the Borrower and the Additional Lender, and, to the extent applicable and agreed to by the Borrower, 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 Elected Commitment Increase Certificate or the Additional Lender Certificate (or if any Term Benchmark Borrowings are outstanding, then the last day of the Interest Period in respect of such Term Benchmark Borrowings, unless the Borrower has paid any compensation required by Section 5.02): (A) the amount of the Aggregate Elected Commitment Amounts shall be 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 Revolving Lender and Term Lender under this Agreement and the other Loan Documents. In addition, the Revolving Lender or the Additional Lender, as applicable, shall (1) purchase a pro rata portion of the outstanding Revolving Loans (and participation interests in Letters of Credit) of each of the other Revolving Lenders (and such Revolving Lenders hereby agree to sell and to take all such further action to effectuate such sale) such that each Revolving Lender (including any Additional Lender, if applicable) shall hold its Revolving Applicable Percentage of the outstanding Revolving Loans (and participation interests) after giving effect to the increase in the Aggregate Elected Commitment Amounts (and the resulting modifications of each Lender's Maximum Credit Amount pursuant to Section 2.06(c)(iv) or Section 2.06(c)(v)) and (2) purchase a pro rata portion of the outstanding Term Loans of each other Term Lender (and such Term Lenders hereby agree to sell and to take all such further action to effectuate such sale) such that each Term Lender (including any Additional Lender, if applicable) shall have a Term Applicable Percentage that is equal to its Revolving Applicable Percentage after giving effect to the increase in the Aggregate Elected Commitment Amounts. All purchases and sales made pursuant to clauses (1) and (2) above shall be deemed to have been made in accordance with the terms of the form of Assignment and Assumption attached hereto as Exhibit F.

(iv) Upon its receipt of a duly completed Elected Commitment Increase Certificate or an Additional Lender Certificate, executed by the Borrower and the Revolving Lender or by the Borrower and the Additional Lender party thereto, as applicable, the processing and recording fee referred to in Section 2.06(c)(ii), 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 Elected Commitment Increase Certificate or Additional Lender Certificate and promptly 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 Aggregate Elected Commitment Amounts 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 Aggregate Elected Commitment Amounts pursuant to this Section 2.06(c), (A) each Lender's Revolving Applicable Percentage, Term Applicable Percentage and Applicable Percentage shall be automatically deemed amended to the extent necessary so that each Lender's (1) Revolving Applicable Percentage equals the percentage of the Aggregate Elected Commitment Amounts represented by such Revolving Lender's Elected Commitment, in each case after giving effect to such increase and (2) Applicable Percentage and Term Applicable Percentage each equal such Lender's Revolving Applicable Percentage, in each case after giving effect to such increase, (B) each Lender's Maximum Credit Amount shall be automatically deemed amended to the extent necessary so that each such Lender's Maximum Credit Amount equals (x) such Lender's Revolving Applicable Percentage of (1) the Aggregate Maximum Credit Amounts less (2) the total Term Loan Exposure plus (y) such Lender's Term Loan Exposure and (C) Annex I to this Agreement shall be deemed amended to reflect the Elected Commitment Amount of each Revolving Lender (including any Additional Lender) as thereby increased, and any changes in the Lenders' respective Revolving Applicable Percentages, Term Applicable Percentages, Applicable Percentages and Maximum Credit Amounts pursuant to the foregoing clause (A) and clause (B).

(vi) The Borrower may from time to time terminate or reduce the Aggregate Elected Commitment Amounts; provided that (A) each reduction of the Aggregate Elected Commitment Amounts shall be in an amount that is an integral multiple of $1,000,000 and not less than $5,000,000, and (B) the Borrower shall not reduce the Aggregate Elected Commitment Amounts if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 3.04(c) and/or cash collateralization of the outstanding Letters of Credit in accordance with Section 2.08(j), the total Revolving Credit Exposures would exceed the Aggregate Elected Commitment Amounts as reduced.

(vii) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Aggregate Elected Commitment Amounts under Section 2.06(c)(vi) at least three 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(c)(vii) shall be irrevocable. Any termination or reduction of the Aggregate Elected Commitment Amounts shall be permanent and may not be reinstated, except pursuant to Section 2.06(c)(i). Each reduction of the Aggregate Elected Commitment Amounts shall be made ratably among the Revolving Lenders in accordance with each Revolving Lender's Revolving Applicable Percentage.

(viii) Upon any redetermination or other adjustment in the Borrowing Base pursuant to this Agreement that would otherwise result in the Revolving Borrowing Base becoming less than the Aggregate Elected Commitment Amounts, the Aggregate Elected Commitment Amounts shall be automatically reduced (ratably among the Revolving Lenders in accordance with each Revolving Lender's Applicable Percentage) so that they equal such redetermined Revolving Borrowing Base (and Annex I shall be deemed amended to reflect such amendments to each Revolving Lender's Elected Commitment and the Aggregate Elected Commitment Amounts).

(ix) Contemporaneously with any increase in the Borrowing Base pursuant to this Agreement and subject to Section 2.06(c)(i), if (A) the Borrower elects to increase the Aggregate Elected Commitment Amounts and (B) each Revolving Lender has consented to such increase in its Elected Commitment, then, subject to the approvals set forth in Section 2.06(c)(x), as applicable, the Aggregate Elected Commitment Amounts shall be increased (ratably among the Revolving Lenders in accordance with each Revolving Lender's Revolving 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 Revolving Lender deliver an Elected 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 Revolving Lender's Elected Commitment and the Aggregate Elected Commitment Amounts. 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).

(x) Notwithstanding anything to the contrary set forth in Section 12.02(b), (A) the Elected Commitment of any Revolving Lender cannot be increased without the written consent of such Revolving Lender, (B) prior to the payment in full of the Term Loans and all interest thereon, the Aggregate Elected Commitment Amounts cannot be increased without the consent of each Lender if such increase would cause the Aggregate Elected Commitment Amounts to equal an amount greater than $750,000,000, (C) any increase in the Aggregate Elected Commitment Amounts to an amount that is less than or equal to $750,000,000, will be deemed to be approved by each non-increasing Lender, and (D) no provision contained in Section 2.06(c)(x)(A) may be waived, amended or modified in any manner without the written consent of each Revolving Lender and no provision contained in Section 2.06(c)(x)(B) or Section 2.06(c)(x)(C) may be waived, amended or modified in any manner without the written consent of each Lender.

Section 2.07. Borrowing Base.

(a) Borrowing Base. For the period from and including the Effective Date to but excluding the first Redetermination Date, the amount of the Borrowing Base shall be $800,000,000. Notwithstanding the foregoing, the Borrowing Base may be subject to further adjustments in between Scheduled Redeterminations from time to time pursuant to Section 2.07(e), Section 2.07(f), Section 8.13(c) or any other provision hereunder or under any other Loan Document which requires or permits the amount of the Borrowing Base to be adjusted.

(b) Scheduled and Interim Redeterminations. The Borrowing Base shall be redetermined, (i) initially on or about February 1, 2027 and June 1, 2027, and (ii) thereafter semi-annually on or about April 1st and October 1st of each year (or, in each case, such date promptly thereafter as reasonably practicable), commencing on or about October 1, 2027, in each case in accordance with this Section 2.07 (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 Collateral Agent, the Issuing Banks, and the Lenders. In addition, the Borrower may, by notifying the Administrative Agent thereof, and the Administrative Agent may, at the direction of the Required Lenders, by notifying the Borrower thereof, one time between Scheduled Redeterminations, each elect to cause the Borrowing Base to be redetermined between Scheduled Redeterminations (an "Interim Redetermination") in accordance with this Section 2.07.

(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 (A) the Reserve Report 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 (c), and, in the case of an Interim Redetermination, pursuant to Section 8.12(b) and (c), and (B) such other reports, data and supplemental information, including, without limitation, the information provided pursuant to Section 8.12(c), as may, from time to time, be reasonably requested by any Lender (the Reserve Report, 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 and its sole discretion, 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 Debt, the Credit Parties' other assets, liabilities, fixed charges, cash flow, business, properties, prospects, management and ownership, hedged and unhedged exposure to price, price and production scenarios, interest rate and operating cost changes) 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. In no event shall the Proposed Borrowing Base exceed the Aggregate Maximum Credit Amounts.

(ii) The Administrative Agent shall notify the Lenders of the Proposed Borrowing Base (the "Proposed Borrowing Base Notice") 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

(iii) Any Proposed Borrowing Base that would increase the Borrowing Base then in effect must be approved by all of the Lenders as provided in this Section 2.07(c)(iii); and any Proposed Borrowing Base that would decrease or maintain the Borrowing Base then in effect must be approved or be deemed to have been approved by the Required Lenders as provided in this Section 2.07(c)(iii). Upon receipt of the Proposed Borrowing Base Notice, each 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, in the case of any Proposed Borrowing Base that would decrease or maintain the Borrowing Base then in effect, at the end of such fifteen (15) days, any Lender has not communicated its approval or disapproval in writing to the Administrative Agent, such silence shall be deemed to be an approval of the Proposed Borrowing Base. If, in the case of any Proposed Borrowing Base that would increase the Borrowing Base then in effect, at the end of such fifteen (15) days, any Lender has not communicated its approval or disapproval in writing to the Administrative Agent, such silence shall be deemed to be a disapproval of the Proposed Borrowing Base. If, at the end of such 15-day period, all of the 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 or, in the case of a decrease or reaffirmation, deemed to 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 Lenders or the Required Lenders, as applicable, have not approved or, in the case of a decrease or reaffirmation, deemed to have approved, as aforesaid, then the Administrative Agent shall poll the Lenders to ascertain the highest Borrowing Base then acceptable to (A) in the case of a decrease or reaffirmation, a number of Lenders sufficient to constitute the Required Lenders and (B) in the case of an increase, all of the Lenders, and 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 or is deemed to have been approved by all of the 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 Collateral Agent, the Issuing Banks, 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 (c) in a timely and complete manner, then on or about February 1, 2027, on or about June 1, 2027, or thereafter on or about October 1st or April 1st (or, in each case, such date promptly thereafter as reasonably practicable), as applicable, following such 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 (c) in a timely and complete manner, then on the next Business Day succeeding delivery of such notice; and

(ii) in the case of an Interim Redetermination, on the next Business Day succeeding delivery of such notice.

Such amount shall then become the Borrowing Base until the next Scheduled Redetermination Date, the next Interim Redetermination Date, the next adjustment to the Borrowing Base under Section 2.07(e), Section 2.07(f) or Section 8.13(c) or the next adjustment to the Borrowing Base under any other provision of this Agreement or any other Loan Document which requires or permits an adjustment to the Borrowing Base, 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) Reduction of Borrowing Base upon Sale of Properties or Termination of Swap Agreements. In addition to the other redeterminations or adjustments of the Borrowing Base provided for herein, if at any time the aggregate Borrowing Base Value of Borrowing Base Properties sold or disposed of and Swap Agreements in respect of commodities terminated or otherwise monetized, in each case pursuant to Section 9.11(d), in any period since the most recent determination of the Borrowing Base, exceeds 5% of the Borrowing Base then in effect (after giving effect to any Swap Agreements executed by the Credit Parties contemporaneously with the termination or monetization of such Swap Agreements), then the Borrowing Base shall be automatically reduced by an amount equal to the Borrowing Base Value of such Properties sold or disposed of and Swap Agreements in respect of commodities terminated or otherwise monetized, and, in each case, the Borrowing Base as so reduced shall become the new Borrowing Base immediately upon such sale or disposition (or, in the case of a Swap Agreement, termination or other monetization), effective and applicable to the Borrower, the Administrative Agent, the Collateral Agent, the Issuing Banks and the Lenders until the next redetermination or other adjustment of the Borrowing Base pursuant to this Agreement or any other Loan Document.

(f) Reduction of Borrowing Base Upon Incurrence of Permitted Additional Debt. In addition to the other redeterminations of the Borrowing Base provided for herein, and notwithstanding anything to the contrary set forth herein, upon the incurrence of any Permitted Additional Debt (other than any Permitted Refinancing Debt), the Borrowing Base then in effect shall be automatically reduced by an amount equal to the product of 0.25 multiplied by the stated principal amount of such Permitted Additional Debt (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 incurrence, effective and applicable to the Borrower, the Administrative Agent, the Collateral Agent, the Issuing Banks and the Lenders until the next redetermination or other adjustment of the Borrowing Base pursuant to this Agreement or any other Loan Document.

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 Restricted Subsidiaries, 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 (i) 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 and (ii) no Issuing Bank shall be under any obligation to issue a Letter of Credit that would result in more than a total of ten Letters of Credit outstanding. 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 applicable Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(b) Issuance.

(i) 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 or facsimile (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable Issuing Bank) to the applicable Issuing Bank and the Administrative Agent (not less than five (5) Business Days (or such shorter period agreed to by such Issuing Bank) in advance of the requested date of issuance, amendment, renewal or extension) a notice:

(A) requesting the issuance of a Letter of Credit or identifying the Letter of Credit to be amended, renewed or extended;

(B) specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day);

(C) specifying the date on which such Letter of Credit is to expire (which shall comply with Section 2.08(c));

(D) specifying the amount of such Letter of Credit;

(E) 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

(F) specifying the amount of the then effective Borrowing Base and the then effective Aggregate Elected Commitment Amounts and whether a Borrowing Base Deficiency exists at such time, 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), the total Term Loan Exposure, and the total Revolving Credit Exposures, on a pro forma basis (giving effect to the requested Letter of Credit or the requested amendment, renewal or extension of an outstanding Letter of Credit).

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, (x) the LC Exposure shall not exceed the LC Commitment, and (y) the total Revolving Credit Exposures shall not exceed the then effective Revolving Loan Limit.

No Issuing Bank shall issue any Letters of Credit unless such Issuing Bank shall have received notice from the Administrative Agent that the conditions to such issuance have been met, which notice shall be deemed given (1) if such Issuing Bank has not received notice from the Administrative Agent that the conditions to such issuance have been met within two Business Days after the date of the applicable request or (2) the aggregate amount of the LC Exposure attributable to Letters of Credit issued by such Issuing Bank, after giving effect to such requested issuance of a Letter of Credit or the amendment, renewal or extension of an outstanding Letter of Credit, as applicable, will not exceed such Issuing Bank's LC Issuance Limit, the Administrative Agent and Issuing Bank, and the Administrative Agent has not otherwise notified such Issuing Bank that it may no longer rely on clause (1).

If requested by the applicable Issuing Bank, the Borrower also shall submit a letter of credit application on such Issuing Bank's standard form in connection with any request for a Letter of Credit; *provided* that, in the event of any conflict between such application or any Letter of Credit Agreement and the terms of this Agreement, the terms of this Agreement shall control.

(ii) Letters of Credit issued hereunder shall constitute utilization of the Revolving Commitments. A Letter of Credit shall be issued, extended, reinstated, or otherwise amended only if (and upon issuance, extension, reinstatement or other amendment of each Letter of Credit Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, extension, reinstatement or other amendment (i) the aggregate amount of LC Exposure shall not at any time exceed the aggregate LC Commitment of the Issuing Banks; (ii) no Revolving Lender will exceed its individual Revolving Commitment; and (iii) the aggregate amount of all Borrowings of Revolving Loans and LC Exposure incurred under this Agreement shall not exceed the Revolving Loan Limit.

(iii) Borrower is responsible for preparing or approving the text of each Letter of Credit as submitted to and as issued by any Issuing Bank and as received by the beneficiary, notwithstanding any drafting recommendations or forms provided by such Issuing Bank. Each Issuing Bank's recommendation or drafting of text or such Issuing Bank's use or non-use or refusal to use text submitted by Borrower shall not affect Borrower's ultimate responsibility. Borrower is responsible for any Issuing Bank's failure to apply, or to observe standard practice as applied to, Letter of Credit terms or conditions, and for terms or conditions that (A) are erroneous, ambiguous, inconsistent, insufficient, ineffective, or illegal, (B) require any Issuing Bank to respond to a demand in fewer than three Business Days, or (C) require or allow Borrower to sign, issue, or present a document. Notwithstanding anything to the contrary in this Agreement, each Issuing Bank's obligation to issue, amend, or extend the expiration date of a Letter of Credit is subject to its review and approval of the proposed terms of the Letter of Credit (and any amendment thereof) in its sole discretion. Borrower represents and warrants to each Issuing Bank that Borrower is familiar with, and understands, applicable law and letter of credit practice. If requested by any Issuing Bank, Borrower will execute, deliver, and submit a Letter of Credit Agreement and reimbursement agreement on such Issuing Bank's standard forms in connection with any request for a Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any such Letter of Credit Agreement or reimbursement agreement, the terms and conditions of this Agreement will control, for so long as Borrower and such Issuing Bank are subject thereto. Notwithstanding anything to the contrary in this Agreement but subject to Borrower's ultimate responsibility as set forth above in this paragraph (a), each Issuing Bank's obligation to issue, amend, or extend the expiration date of a Letter of Credit is subject to its review and approval of the proposed terms of the Letter of Credit (and any amendment thereof) in its sole discretion.

(iv) Borrower will notify the applicable Issuing Bank in writing no later than three Business Days after Borrower first becomes aware of any objection Borrower may have to such Issuing Bank's issuance or amendment of a Letter of Credit, such Issuing Bank's acceptance or rejection of a presentation under any Letter of Credit, or any other action or inaction taken or proposed to be taken by such Issuing Bank under or in connection with this Agreement or any other agreement, document, or instrument relating hereto; *provided, however*, that if such Issuing Bank reasonably believes that it is obligated to take any action, including, but not limited to, the payment on a Letter of Credit in a period of time less than three Business Days, such Issuing Bank is allowed to take such action without liability to Borrower. Borrower's failure to give timely and specific notice of objection shall automatically waive Borrower's objection, authorize or ratify such Issuing Bank's action or inaction, and absolutely preclude Borrower from raising the objection as a defense or claim against such Issuing Bank (or any Indemnitee). If any Issuing Bank approaches Borrower for a waiver of discrepancies in a presentation, then Borrower must respond within three Business Days. Such Issuing Bank may treat Borrower's failure to respond as a waiver of the indicated discrepancies, but need not itself accept Borrower's implied or express waiver of discrepancies as binding on such Issuing Bank. Borrower's acceptance or retention of any documents presented under or in connection with a Letter of Credit (including, but not limited to, originals or copies of documents sent directly to Borrower) or of any property for which payment is supported by any Letter of Credit shall ratify such Issuing Bank's honor of the relevant presentation and absolutely preclude Borrower from raising a defense or claim against such Issuing Bank (or any Indemnitee) with respect to such honor.

(c) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date that is eighteen (18) months after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such previous expiration date) and (ii) the date that is five Business Days prior to the Revolving Maturity Date. If the Borrower so requests in any applicable notice given pursuant to Section 2.08(b) and the applicable Issuing Bank agrees to do so, such Issuing Bank may issue a Letter of Credit that has automatic renewal provisions for an additional 12-month period; provided, however, that any Letter of Credit that has automatic renewal provisions must permit the applicable Issuing Bank to prevent any such renewal at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day in each such twelve-month period to be agreed upon by the Borrower and the applicable Issuing Bank at the time such Letter of Credit is issued and any such Letter of Credit may not have an expiration date later than the date that is five Business Days prior to the Revolving Maturity Date. Once any such Letter of Credit that has automatic renewal provisions has been issued, the Revolving Lenders shall be deemed to have authorized (but may not require) the applicable Issuing Bank to permit the renewal of such Letter of Credit at any time to an expiry date not later than thirty (30) days prior to the Revolving Maturity Date; provided, further, that such Issuing Bank shall not permit any such renewal if (A) such Issuing Bank has determined that it would have no obligation at such time to issue such Letter of Credit in its renewed form under the terms hereof, or (B) it has received notice (which may be by telephone or in writing) on or before the day that is two (2) Business Days before the date that such Issuing Bank is permitted to send a notice of non-renewal from the Administrative Agent, any Revolving Lender or the Borrower that one or more of the applicable conditions specified in Section 6.02 is not then satisfied.

(d) Participations.

(i) By the issuance of a Letter of Credit (including any 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 Revolving Lenders, the applicable Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Revolving Lender's Revolving Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of such Issuing Bank, such Revolving Lender's Revolving 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 Revolving 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 reduction or termination of the Revolving Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(ii) In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely, unconditionally, and irrevocably agrees to pay to Administrative Agent, for account of each Issuing Bank, such Revolving Lender's Applicable Percentage of each payment made by such Issuing Bank promptly upon the request of such Issuing Bank at any time from the time of such payment until such payment is reimbursed by Borrower or at any time after any reimbursement payment is required to be refunded to Borrower for any reason, including after the Maturity Date. Such payment by each Revolving Lender shall be made without any offset, abatement, withholding, or reduction whatsoever (including without limitation any offset, abatement, withholding or reduction relating to or arising out of those matters set forth in paragraph (h) below), and shall be made in the same manner as provided in this Agreement with respect to Revolving Loans (and such provisions shall apply, *mutatis mutandis*, to the payment obligations of the Lenders under this paragraph). Administrative Agent shall promptly pay to such Issuing Bank the amounts so received by it from the Revolving Lenders. Promptly following receipt by Administrative Agent of any payment from Borrower pursuant to paragraph (d) below, Administrative Agent shall distribute such payment to such Issuing Bank or, to the extent that the Revolving Lenders have made payments pursuant to this paragraph to reimburse such Issuing Bank, to such Revolving Lenders and such Issuing Bank as their interests may appear. Any payment made by a Revolving Lender pursuant to this paragraph to reimburse such Issuing Bank for any payment under a Letter of Credit shall not constitute a Loan and shall not relieve Borrower of its obligation to reimburse such Letter of Credit payment, unless Borrower has financed such payment with a ABR Loan in accordance with the terms of this Agreement.

(iii) Each Revolving Lender acknowledges and agrees that its participation in each Letter of Credit and the related LC Exposure will be automatically adjusted to reflect adjustments in such Lender's Applicable Percentage from time to time.

(iv) Each Revolving 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 or Event of Default, the existence of a Borrowing Base Deficiency or reduction or termination of the Revolving Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(v) The obligations of the Revolving Lenders under the paragraphs above shall be for the benefit of Administrative Agent and each Issuing Bank and may be enforced by such Issuing Bank.

(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 1:00 p.m., Houston, Texas time, on 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., Houston, Texas 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 1:00 p.m., Houston, Texas time, on the Business Day immediately following the day that the Borrower receives such notice; provided that the Borrower shall, subject to the conditions to Borrowing set forth herein, be deemed to have requested, and the Borrower does hereby request under such circumstances, that such payment be financed with an ABR Borrowing 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 ABR Borrowing. If the Borrower fails to make such payment when due or such ABR Borrowing cannot be made for whatever reason, the Administrative Agent shall notify each Revolving Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Revolving Lender's Revolving Applicable Percentage thereof. Promptly following receipt of such notice, each Revolving Lender shall pay to the Administrative Agent its Revolving Applicable Percentage of the payment then due from the Borrower, in the same manner as provided in Section 2.05 with respect to Loans made by such Revolving Lender (and Section 2.05 shall apply, mutatis mutandis, to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the applicable Issuing Bank the amounts so received by it from the Revolving 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 such Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to this Section 2.08(e) to reimburse such Issuing Bank, then to such Revolving Lenders and such Issuing Bank as their interests may appear. Any payment made by a Revolving Lender pursuant to this Section 2.08(e) to reimburse any Issuing Bank for any LC Disbursement (other than the funding of ABR Loans as contemplated above) shall not constitute 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 not subject to abatement, reduction, withholding, deduction, deferment, interruption, recoupment, or other right (whether legal, equitable, or otherwise) for any reason whatsoever, without necessity of presentment, demand, protest, or other formalities, and the obligations of each Revolving Lender to make payments to Administrative Agent with respect to Letters of Credit shall be absolute, unconditional, and irrevocable, and in each case, shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of:

(i) any lack of validity or enforceability of any Letter of Credit, any Letter of Credit Agreement, this Agreement, or any other Loan Document, or any other agreement, or any term or provision herein or therein;

(ii) 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;

(iii) payment by the applicable 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;

(iv) the existence of any claim, setoff, defense (including suretyship), or other right that Borrower or any of its Affiliates or any Revolving Lender may at any time have against a beneficiary or any transferee of any Letter of Credit (or any Persons or entities for whom any such transferee may be acting), Administrative Agent, any Revolving Lender, or any other Person, whether in connection with this Agreement, the Letter of Credit, the transactions contemplated herein or therein, or any unrelated transaction (including any underlying transaction between Borrower or any of its Affiliates and the beneficiary for which the Letter of Credit was procured);

(v) the fact that a Default or an Event of Default has occurred and is continuing;

(vi) any bankruptcy, insolvency, receivership, reorganization, or similar proceeding discharging or otherwise affecting Borrower or any of its Affiliates;

(vii) Administrative Agent's, any Issuing Bank's, or any other Revolving Lender's rights and remedies with respect to any collateral;

(viii) Borrower's claims, rights, or remedies against any of its Affiliates;

(ix) Administrative Agent's, any Issuing Bank's, or any other Revolving Lender's waiver or release of any obligation of Borrower;

(x) any amendment, supplement, restatement, or renewal of this Agreement or any other agreement, document, or instrument relating hereto;

(xi) any loss or damage to any collateral;

(xii) the failure of any lien or security interest in favor of Administrative Agent (for the benefit of the Lenders) to attach, be perfected or recorded, or remain perfected or recorded;

(xiii) Administrative Agent's release of any collateral, or taking of additional collateral, and Borrower waives any and all rights with respect to all of the foregoing; or

(xiv) 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 the Issuing Banks, 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 an 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 care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of an Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank shall be deemed to have exercised all requisite care in each such determination. 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, each 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, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Such Issuing Bank shall promptly notify the Administrative Agent and the Borrower by telephone (confirmed by facsimile) 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 any Issuing Bank and the Revolving 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 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 Revolving Lender pursuant to Section 2.08(e) to reimburse such Issuing Bank shall be for the account of such Revolving Lender to the extent of such payment.

(i) Replacement and Resignation of an Issuing Bank.

(i) Any 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 Revolving Lenders of any such replacement of such 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, (i) the successor Issuing Bank shall have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) 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 the Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of the 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.

(ii) Subject to the appointment and acceptance of a successor Issuing Bank, any Issuing Bank may resign as an Issuing Bank at any time upon thirty days' prior written notice to the Administrative Agent, the Borrower and the Revolving Lenders, in which case, such resigning Issuing Bank shall be replaced in accordance with Section 2.08(i)(i) above.

(j) Cash Collateralization. If (i) any Event of Default shall occur and be continuing and the Borrower receives notice from the Administrative Agent or the Majority Revolving Lenders demanding the deposit of cash collateral pursuant to this Section 2.08(j), (ii) the LC Exposure exceeds the lesser of the LC Commitment or the Revolving Loan Limit or (iii) the Borrower is required to pay to the Collateral Agent the excess attributable to an LC Exposure in connection with any prepayment pursuant to Section 3.04(c), then the Borrower shall deposit, in the case of clause (i) or (ii), on demand, or in the case of clause (iii), by the date specified therefor in Section 3.04(c), in an account with the Collateral Agent, in the name of the Collateral Agent and for the benefit of the Revolving Lenders, an amount in cash equal to, in the case of an Event of Default, the LC Exposure, in the case of the LC Exposure exceeding the LC Commitment, the amount of such excess, and in the case of a payment required by Section 3.04(c), the amount of such excess as provided in Section 3.04(c), as of such date plus any accrued and unpaid interest thereon; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower or any Restricted Subsidiary described in Section 10.01(h) or Section 10.01(i). The Borrower hereby grants to the Collateral Agent, for the benefit of the Issuing Banks and the Revolving Lenders, an exclusive first priority and continuing perfected security interest in and Lien on such account 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. The Borrower's obligation to deposit amounts pursuant to this Section 2.08(j) shall be absolute and unconditional, without regard to whether any beneficiary of any such 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 of its Subsidiaries may now or hereafter have against any such beneficiary, the Issuing Banks, the Administrative Agent, the Collateral Agent, the Lenders or any other Person for any reason whatsoever. Such deposit shall be held as collateral securing the payment and performance of the Borrower's and the Guarantor's 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 such account. 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 such account. Moneys in such account shall be applied by the Collateral Agent to reimburse the Issuing Banks 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 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 provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, and the Borrower is not otherwise required to pay to the Collateral Agent the excess attributable to an LC Exposure in connection with any prepayment pursuant to Section 3.04(c), then such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three Business Days after all Events of Default have been cured or waived.

(k) Defaulting Lenders. If, at any time, a Defaulting Lender exists hereunder, then, within one (1) Business Day following the written request of any Issuing Bank, the Borrower shall cash collateralize the Fronting Exposure of the Issuing Banks with respect to such Defaulting Lender (determined after giving effect to Section 2.09(a)(iv) and any cash collateral provided by such Defaulting Lender) in an amount equal to the lesser of (x) the amount of such Fronting Exposure and (y) an amount otherwise agreeable to the Issuing Banks and the Administrative Agent in their sole discretion.

(i) Grant of Security Interest. 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 agrees to maintain, a first priority security interest in all such cash collateral as security for (A) in the case of the Defaulting Lender, the Defaulting Lender's obligation to fund participations in respect of LC Exposure, to be applied pursuant to clause (ii) below and (B) in the case of the Borrower, its obligations hereunder to reimburse the LC Exposure for which such Defaulting Lender is obligated as a participant. Borrower or such Defaulting Lender, as applicable, shall execute any documents and agreements, including the Administrative Agent's standard form assignment of deposit accounts, that the Administrative Agent reasonably requests in connection therewith to establish such cash collateral account and to grant the Administrative Agent, for the benefit of the Issuing Banks, a first priority security interest in such account and the funds therein. If at any time the Administrative Agent determines that cash collateral is subject to any right or claim of any Person other than the Administrative Agent and the Issuing Banks as herein provided, or that the total amount of such cash collateral is less than the amount required above, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional cash collateral in an amount sufficient to eliminate such deficiency (after giving effect to any cash collateral provided by the Defaulting Lender).

(ii) Application. Notwithstanding anything to the contrary contained in this Agreement, cash collateral provided under this Section 2.08(k) or Section 2.09(a)(v) in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of LC Exposure (including, as to cash collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the cash collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(iii) Termination of Requirement. Cash collateral (or the appropriate portion thereof) provided to reduce the Issuing Banks' Fronting Exposure shall no longer be required to be held as cash collateral pursuant to this Section 2.08(k) following (A) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (B) the determination by the Administrative Agent and the Issuing Banks that there exists excess cash collateral; *provided that*, subject to Section 2.08(n), (x) the Issuing Banks may determine in their sole discretion that cash collateral provided by a Defaulting Lender shall be held to support future anticipated Fronting Exposure or other obligations of such Defaulting Lender and (y) the Borrower and the Issuing Banks may agree that cash collateral provided by the Borrower shall be held to support future anticipated Fronting Exposure or other obligations; and *provided further* that to the extent that such cash collateral was provided by the Borrower, such cash collateral shall remain subject to any other security interest granted pursuant to the Loan Documents.

(l) LC Exposure Determination. For all purposes of this Agreement, the amount of a Letter of Credit that, by its terms or the terms of any document related thereto, provides for one or more automatic increases in the stated amount thereof shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at the time of determination.

(m) Reports from Issuing Banks. Each Issuing Bank (other than the Administrative Agent or any of its Affiliates) shall, upon the reasonable request of the Administrative Agent, provide the Administrative Agent with a list of all Letters of Credit issued by such Issuing Bank that are outstanding at such time.

(n) Obligation to Issue Letters of Credit. Notwithstanding anything herein to the contrary, 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;

(ii) the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of credit generally and such policies are being applied by such Issuing Bank to similarly situated borrowers in similar circumstances under agreements containing provisions similar hereto;

(iii) except as otherwise agreed by Administrative Agent and such Issuing Bank, such Letter of Credit is in an initial amount less than $100,000;

(iv) the proceeds from the issuance of such Letter of Credit would, to the actual or reasonably foreseeable knowledge of Borrower, be made available by Borrower or any of its Subsidiaries to any Person (A) to fund any activity or business of or with any Sanctioned Person, or in any Sanctioned Country, in a manner that would violate Sanctions or (B) in any manner that would result in a violation of any Sanctions by any party to this Agreement; or

(v) any Revolving Lender is at that time a Defaulting Lender, unless such Issuing Bank has entered into arrangements, including the delivery of Cash Collateral, satisfactory to such Issuing Bank (in its sole discretion) with Borrower or such Revolving Lender to eliminate such Issuing Bank's actual or potential Fronting Exposure (after giving effect to any reallocation under Section 2.09) with respect to the Defaulting Lender arising from either such Letter of Credit then proposed to be issued or such Letter of Credit and all other LC Exposure as to which such Issuing Bank has actual or potential Fronting Exposure, as it may elect in its sole discretion.

Such Issuing Bank shall be under no obligation to amend any Letter of Credit if (A) such Issuing Bank would have no obligation at such time to issue the Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of the Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(o) Letters of Credit Issued for account of Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, Borrower shall be obligated as a primary obligor as set forth herein for any and all drawings under such Letter of Credit, and irrevocably waives any defenses that might otherwise be available to it as a guarantor or surety of the obligations of such Subsidiary. Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of Borrower, and that Borrower's business derives substantial benefits from the businesses of such Subsidiaries. To the extent that any Letter of Credit is issued for the account of any Subsidiary of Borrower, Borrower agrees that (i) such Subsidiary shall have no rights against any Issuing Bank, Administrative Agent, or any Lender and Borrower shall hold any Issuing Bank, Administrative Agent and any such Lender harmless with respect to any claim or other attempted exercise of rights by such Subsidiary against any of them, (ii) Borrower shall be responsible for the obligations in respect of such Letter of Credit under this Agreement and any application or reimbursement agreement, (iii) Borrower shall have the sole right to give instructions and make agreements with respect to this Agreement and the Letter of Credit, and the disposition of documents related thereto, and (iv) Borrower shall have all powers and rights in respect of any security arising in connection with the Letter of Credit and the transactions related thereto. Borrower shall, at the request of any Issuing Bank, cause such Subsidiary to execute and deliver an agreement confirming the terms specified in the immediately preceding sentence and acknowledging that it is bound thereby.

(p) Rules of Practice. Unless otherwise expressly agreed by any Issuing Bank and the Borrower when a Letter of Credit is issued by it, the rules of the International Standby Practices, ICC Publication No. 590 (as amended, supplemented, restated, and/or republished from time to time, the "ISP") shall apply to each standby Letter of Credit, and shall apply to each commercial Letter of Credit. Notwithstanding the foregoing, no Issuing Bank shall be responsible to the Borrower for, and each Issuing Bank's rights and remedies against the Borrower shall not be impaired by, any action or inaction of such Issuing Bank required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the laws or any order of a jurisdiction where such Issuing Bank, the beneficiary, or any advising, transferring, confirming, or nominated bank or person or entity is located, the practice stated in the ISP , as applicable, or in the decisions, opinions, practice statements, or official commentary of the International Chamber of Commerce Banking Commission, the Bankers Association for Finance and Trade, or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such laws or practice rules.

(q) Issuing Banks' Discretion.

(i) For the Borrower's account, any Issuing Bank may at any time provide in a Letter of Credit or otherwise agree to do or do the following:

(A) send the Letter of Credit via the Society for Worldwide Interbank Financial Telecommunication ("SWIFT") network and bind the Borrower directly and as an indemnifier to the rules applicable to SWIFT messages (including, but not limited to, rules obligating the Borrower or such Issuing Bank to pay bank charges);

(B) assert, waive, or, with any necessary consent from the beneficiary or other person or entity, amend any provision in the Letter of Credit or applicable practice that primarily concerns issuer operations including, but not limited to, (I) identification of the Letter of Credit in any presentation, (II) marking of the Letter of Credit to reflect a transfer, payment, or other action, (III) specification of the business days and hours, manner, and place for the Issuing Bank receiving a presentation, effecting honor, and giving notice of dishonor under the Letter of Credit, (IV) duration of the period(s) for examination, approaching the Borrower for a waiver, or sending a notice of refusal, (V) disposition of the beneficiary's documents after dishonor or while approaching the Borrower for a waiver, and (VI) replacement of a lost Letter of Credit or recognition of a successor beneficiary;

(C) discount an accepted draft or deferred payment undertaking incurred under the Letter of Credit, at the request of the beneficiary or other third party, without affecting the amount or due date of the Borrower's obligations to reimburse or pay fees to such Issuing Bank;

(D) select any branch, bank office, or Affiliate of such Issuing Bank or any other bank or financial institution or Affiliate for issuing, advising, transferring, confirming, and/or nominating bank or person or entity under the law and practice of the place where it acts (if the Letter of Credit permits advice, transfer, confirmation, and/or nomination) to act under contract with such Issuing Bank as a letter of credit processing agent for such Issuing Bank in such Issuing Bank's issuance of the Letter of Credit or processing of demands or in any other action that such Issuing Bank is required or permitted to take under the Letter of Credit;

(E) accept documents that appear on their face to be in substantial compliance with the terms and conditions of a Letter of Credit without responsibility for further investigation and disregarding any information or data outside of the face of the documents, regardless of any notice or information to the contrary, and may honor and make payment upon any presentation that appears on its face to substantially comply with the terms and conditions of a Letter of Credit, whether or not the Letter of Credit requires strict compliance and without regard to any non-documentary condition in such Letter of Credit (including, but not limited to, honor of a draft that is non-negotiable or informal, honor up to the amount available under the Letter of Credit of a demand claiming more than that amount, honor of a draft or other document that lacks a reference to the Letter of Credit, honor of a presentation of documents that include inconsistent extraneous data, and allowance of a grace period of one business day for timing requirements under the Letter of Credit);

(F) decline to accept any documents and make payment if such documents are not in strict compliance with the terms and conditions of a Letter of Credit;

(G) provide for or submit to arbitration, mediation, DOCDEX (the ICC Banking Commission's informal dispute resolution service), or the like for the resolution of some or all disputes with the beneficiary or other person or entity; and

(H) replace a purportedly lost, stolen, or destroyed original Letter of Credit or amendment thereto with a replacement marked as such or waive a requirement for its presentation.

(ii) Unless specifically committed to do so in a writing signed by an Issuing Bank, no Issuing Bank is required to issue any Letter of Credit amendment. If the Letter of Credit may be extended or terminated by a notice given or other action taken by an Issuing Bank (with or without the passage of time), then, whether or not requested to do so by the Borrower, such Issuing Bank shall have the right to give such notice or take such action, to fail or refuse to do so, or to fail to retain proof of doing so. If any Issuing Bank gives such notice or takes such action at the Borrower's request, then the Borrower shall obtain the beneficiary's acknowledgement and, in the case of a Letter of Credit termination, return the original Letter of Credit. If any Issuing Bank fails or refuses to give notice of non-extension or termination at the Borrower's timely written request, then such Issuing Bank's Letter of Credit fees shall be calculated as if such Issuing Bank had given such notice or taken such action.

(iii) If the beneficiary or another person or entity claims that an Issuing Bank has wrongfully repudiated or dishonored a Letter of Credit, then such Issuing Bank shall have the right to defend or settle the claim, with or without joining the Borrower in any proceeding or negotiation and without regard to whether the claimant asserts that such Issuing Bank is precluded from relying on a valid defense. The Borrower shall have the obligation to mitigate damages and, if such Issuing Bank pays or settles a claim, then the Borrower will reimburse, indemnify, account for any benefits, and cooperate with such Issuing Bank as subrogee.

(iv) An Issuing Bank's actions in one or more instances shall not waive its right, with or without notice to the Borrower, to use its discretion differently in other similar instances and shall not establish a course of conduct on which the Borrower may rely in any other instances under the same or other Letter of Credit.

(r) Fees and Expenses. In addition to the Letter of Credit fees payable pursuant to Section 3.05(b) of this Agreement, Borrower shall pay to each Issuing Bank, on demand, such Letter of Credit fees as are set forth from time to time in such Issuing Bank's fee schedule for letters of credit. Borrower acknowledges that any Issuing Bank may modify such fee schedule at any time and will communicate such new fee schedule information to Borrower as required in the notice provision hereunder. Such new fees will be effective 30 days after such notice and shall apply as of such date to all existing and future Letters of Credit issued by such Issuing Bank. In the event of any inconsistency between the fees set forth in this Agreement and the fees set forth in such fee schedule, the fees set forth in this Agreement will control.

(s) Indemnification; Nature of Duties.

(i) In addition to amounts payable as elsewhere provided in this Agreement, Borrower hereby agrees to pay and to protect, indemnify, and save harmless Administrative Agent, each Issuing Bank, and each Lender, and each other Indemnitee, from and against any and all claims, demands, liabilities, damages, losses, costs, charges, and expenses (including reasonable attorneys' fees) that Administrative Agent, any Issuing Bank, or any Lender may incur or be subject to as a consequence, direct or indirect, of (A) the issuance of any Letter of Credit or guaranty thereof, (B) the failure of Administrative Agent or any Lender seeking indemnification or of any Issuing Bank to honor a demand for payment under any Letter of Credit or guaranty thereof as a result of any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority, (C) arising from or incurred in connection with any breach of a representation, warranty, or covenant by Borrower; (D) arising out of or resulting from any suit, action, claim, proceeding, or governmental investigation, pending or threatened, whether based on statute, regulation, or order, or tort, or contract, or otherwise, before any court or Governmental Authority (and irrespective of who may be the prevailing party); (E) arising out of or in connection with any payment or action taken in connection with any Letter of Credit, including, without limitation, any action or proceeding seeking to restrain any drawing under a Letter of Credit or to compel or restrain any payment or any other action under a Letter of Credit or this Agreement (and irrespective of who may be the prevailing party); or (F) arising out of or in connection with any act or omission of any Governmental Authority or other cause beyond the Indemnitee's reasonable control; except in each case to the extent such claim, demand, liability, loss, damage, tax, penalty, interest, judgment, cost, or expense is found to have resulted from the gross negligence or willful misconduct of an Indemnitee (as finally determined by a court of competent jurisdiction in a non-appealable matter). This Section 2.08(s) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc., arising from any non-Tax claim.

(ii) As between Administrative Agent, any Issuing Bank, and any Revolving Lender and Borrower, Borrower assumes all risks of the acts and omissions of, or misuse of any Letter of Credit by, beneficiaries of any Letter of Credit. In furtherance and not in limitation of the foregoing, to the fullest extent permitted by law, none of Administrative Agent, any Issuing Bank, or any Revolving Lender shall be responsible for: (A) the form, validity, sufficiency, accuracy, genuineness, or legal effect of any document issued by any party in connection with the application for and issuance of any Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent, or forged; (B) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, that may prove to be invalid or ineffective for any reason; (C) failure of the beneficiary of any Letter of Credit to comply fully and strictly with the conditions required in order to demand payment under such Letter of Credit; (D) errors, omissions, interruptions, or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, or otherwise, whether or not they may be in cipher; (E) errors in interpretation of technical terms; (F) any loss or delay in the transmission or otherwise of any document required in order to make a payment under any Letter of Credit or guaranty thereof or of the proceeds thereof; (G) the credit of the proceeds of any drawing under any Letter of Credit or guaranty thereof; and (H) any consequences arising from causes beyond the control of Administrative Agent, Issuing Bank, or any Revolving Lender. None of the above shall affect, impair, or prevent the vesting of any of Administrative Agent's, any Issuing Bank's, or any Revolving Lender's rights or powers hereunder or under this Agreement.

(iii) Limitations on Remedies.

(A) Nothing contained herein shall be deemed to limit or to expand any waivers, covenants, or indemnities made by Borrower in favor of any Issuing Bank in any Letter of Credit Agreement, reimbursement agreement, or similar document, instrument, or agreement between Borrower and any Issuing Bank.

(B) EXCEPT AS MAY BE EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER ANY ISSUING BANK NOR ANY OTHER INDEMNITEE SHALL BE LIABLE TO BORROWER IN CONTRACT, TORT, OR OTHERWISE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES.

(C) Borrower must take action to avoid and reduce the amount of damages claimed against any Issuing Bank (or other Indemnitee, as applicable).

(D) Borrower's aggregate remedies against any Issuing Bank for honoring a presentation or retaining honored documents in breach of such Issuing Bank's obligations to Borrower (whether arising under this Agreement, any other agreement, document, or instrument relating hereto, applicable letter of credit practice or law, or any other applicable law) are limited to the aggregate amounts paid by Borrower to such Issuing Bank with respect to the honored presentation.

(E) In any dispute or litigation between Borrower and any Issuing Bank, Borrower shall pay such Issuing Bank's attorneys' fees, expert witness fees, and other expenses of litigation or dispute resolution, unless Borrower obtains a non-appealable award for damages against such Issuing Bank, as so ordered by a court of competent jurisdiction. If Borrower prevails in an action based on forgery or fraud of the beneficiary or other presenter, this does not relieve Borrower from its obligation to pay such Issuing Bank's fees and expenses in contesting the entry or maintenance of injunctive relief.

(iv) Each Issuing Bank shall act on behalf of the Revolving Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and such Issuing Bank shall have all of the benefits and immunities (A) provided to Administrative Agent in Section 12.03 of this Agreement with respect to any acts taken or omissions suffered by such Issuing Bank in connection with Letters of Credit issued by it or proposed to be issued by it and Letter of Credit documents pertaining to such Letters of Credit as fully as if the term "Agent" as used in Section 12.03 of this Agreement included such Issuing Bank with respect to such acts or omissions, and (B) as additionally provided herein with respect to such Issuing Bank.

(v) Borrower, Administrative Agent, and the Revolving Lenders each agree that, in the absence of gross negligence or willful misconduct on the part of any Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank will be deemed to have exercised care in determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof.

(t) Existing Letters of Credit. On the Effective Date, without further action by any party hereto, (A) each Existing Letter of Credit shall be deemed to be a Letter of Credit issued hereunder on such date and (B) each issuer of an Existing Letter of Credit shall be deemed to have granted to each Revolving Lender, and each Revolving Lender shall be deemed to have acquired from each issuer of an Existing Letter of Credit, a participation in each Letter of Credit in accordance with clause (d) above.

(u) Survival. The provisions of this Section 2.08 shall survive the payment of the Indebtedness (both with respect to any Lender and all Lenders collectively), any termination of this Agreement, and the assignment of any rights hereunder.

Section 2.09. Defaulting Lenders.

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted 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 "Majority Lenders", "Required Lenders", "Majority Term Lenders" and "Majority Revolving Lenders".

(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 the Issuing Banks hereunder; *third*, to cash collateralize the Issuing Banks' Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.08(k); *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Revolving 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 Revolving Loans under this Agreement and (y) cash collateralize the Issuing Banks' future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.08(k); *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 the Issuing Banks against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *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; 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 Revolving Loans or LC Exposure in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Revolving 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 Revolving Loans of, and LC Exposure owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Revolving Loans of, or LC Exposure owed to, such Defaulting Lender until such time as all Revolving Loans and funded and unfunded participations in LC Exposure are held by the Lenders pro rata in accordance with the Revolving Commitments without giving effect to Section 2.09(a)(iv). 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 2.09(a)(ii) 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 fees pursuant to Section 3.05(b)for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Revolving Applicable Percentage of the stated amount of Letters of Credit for which it has provided cash collateral pursuant to Section 2.08(k).

(C) With respect to any fee pursuant to Section 3.05(b) not required to be paid to any Defaulting Lender pursuant to sub-clause (B) above, the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letter of Credit obligations that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the Issuing Banks the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to the Issuing Banks' Fronting Exposure to such Defaulting Lender and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in LC Exposure shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Revolving Applicable Percentages (calculated without regard to such Defaulting Lender's Maximum Credit Amount less such Defaulting Lender's Term Loan Exposure) but only to the extent that (x) the conditions set forth in Section 6.02 are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Administrative Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment then in effect. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, cash collateralize the Issuing Banks' Fronting Exposure in accordance with the procedures set forth in Section 2.08(k).

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Collateral Agent and the Issuing Banks 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 (which may include arrangements with respect to any cash collateral), 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 Revolving Loans and funded and unfunded participations in Letters of Credit to be held pro rata by the Revolving Lenders in accordance with the Revolving Commitments (without giving effect to Section 2.09(a)(iv)), whereupon such Revolving 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 Revolving 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 Revolving Lender will constitute a waiver or release of any claim of any party hereunder arising from that Revolving Lender's having been a Defaulting Lender.

(c) New Letters of Credit. So long as any Revolving Lender is a Defaulting Lender, the Issuing Banks shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

ARTICLE III.

PAYMENTS OF PRINCIPAL AND INTEREST; PREPAYMENTS; FEES

Section 3.01. Repayment of Loans.

(a) Revolving Loans. The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Revolving Lender the then unpaid principal amount of each Revolving Loan on the Termination Date.

(b) Term Loans. The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Term Lender, the then unpaid principal amount of the Term Loans, together with accrued interest thereon, on the Term Maturity Date.

Section 3.02. Interest.

(a) ABR Loans. The Loans comprising each ABR Borrowing shall bear interest at the Adjusted Reference Rate plus the Applicable Margin, but in no event to exceed the Highest Lawful Rate.

(b) Term Benchmark Loans. The Loans comprising each Term Benchmark Borrowing shall bear interest at the Term SOFR Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin, but in no event to exceed the Highest Lawful Rate.

(c) Post-Default Rate. Notwithstanding the foregoing, (i) if any Event of Default of the type described in Section 10.01(a) or Section 10.01(b) occurs, then (A)(I) all overdue (or, at the election of the Majority Lenders (or the Administrative Agent at the direction of Majority Lenders), all outstanding) principal shall automatically bear interest at a rate per annum of two percent (2%) plus the rate applicable to ABR Loans or Term Benchmark Loans, as applicable, as provided in Section 3.02(a) or Section 3.02(b) (including the Applicable Margin), as applicable and (II) all overdue (or, at the election of the Majority Lenders (or the Administrative Agent at the direction of Majority Lenders)), all outstanding) interest, fees and other obligations under any Loan Document (other than fees payable pursuant to Section 3.05(b)) shall automatically bear interest at a rate per annum of two percent (2%) plus the rate applicable to ABR Loans as provided in Section 3.02(a) (including the Applicable Margin) and (B) all fees payable pursuant to Section 3.05(b) shall increase by two percent (2%) per annum over the then-applicable rate, but in no event to exceed the Highest Lawful Rate, and shall be payable on demand by the Administrative Agent and (ii) if any Event of Default occurs (other than an Event of Default described in Section 10.01(a) or Section 10.01(b)), then at the election of the Majority Lenders (or the Administrative Agent at the direction of Majority Lenders), or automatically upon the occurrence of any Event of Default of the type described in Section 10.01(h) or Section 10.01(i), (A)(I) all outstanding principal shall automatically bear interest at a rate per annum of two percent (2%) plus the rate applicable to ABR Loans or Term Benchmark Loans, as applicable, as provided in Section 3.02(a) or Section 3.02(b) (including the Applicable Margin), as applicable and (II) all outstanding interest, fees and other obligations under any Loan Document (other than fees payable pursuant to Section 3.05(b)) shall bear interest at a rate per annum of two percent (2%) plus the rate applicable to ABR Loans as provided in Section 3.02(a) (including the Applicable Margin) and (B) all fees payable pursuant to Section 3.05(b) shall increase by two percent (2%) per annum over the then-applicable rate, but in no event to exceed the Highest Lawful Rate, and shall be payable on demand by the Administrative Agent. References in this Section 3.02(c) to "Applicable Margin" shall mean (x) with respect to any principal and interest relating to the Term Loans, the Applicable Margin for Term Loans, and (y) with respect to any other amount owing under the Loan Documents, the Applicable Margin for Revolving Loans.

(d) Interest Payment Dates. Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and on the Termination Date; *provided* that (i) interest accrued pursuant to Section 3.02(c) shall be payable on demand, or if no demand is made, on each Interest Payment Date, (ii) in the event of any repayment or prepayment of any Loan (other than an optional prepayment of an ABR Loan prior to the Termination Date), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment, and (iii) in the event of any conversion of any Term Benchmark 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) Interest Rate Computations. All interest 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 Adjusted Reference Rate at times when the Adjusted Reference Rate 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). All interest hereunder on any Loan shall be computed on a daily basis based upon the outstanding principal amount of such Loan as of the applicable date of determination. The applicable Adjusted Reference Rate or Term SOFR Rate 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), (c), (d), (e), and (f) of this Section 3.03, if:

(i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) prior to the commencement of any Interest Period for a Term Benchmark Borrowing, that adequate and reasonable means do not exist for ascertaining the Term SOFR Rate (including because the Term SOFR Reference 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 prior to the commencement of any Interest Period for a Term Benchmark Borrowing, the Term SOFR Rate 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 (x) the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Borrower delivers a new Interest Election Request in accordance with the terms of Section 2.04 or a new Borrowing Request in accordance with the terms of Section 2.03, any Interest Election Request that requests the conversion of any Revolving Borrowing to, or continuation of any Revolving Borrowing as, a Term Benchmark Borrowing and any Borrowing Request that requests a Term Benchmark Borrowing shall instead be deemed to be an Interest Election Request or a Borrowing Request, as applicable, for an ABR Borrowing; provided that if the circumstances giving rise to such notice affect only one Type of Borrowing, then all other Types of Borrowings shall be permitted. Furthermore, if any Term Benchmark Loan is outstanding on the date of the Borrower's receipt of the notice from the Administrative Agent referred to in this Section 3.03(a) with respect to the Term SOFR Rate applicable to such Term Benchmark Loan, then until (x) the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Borrower delivers a new Interest Election Request in accordance with the terms of Section 2.04 or a new Borrowing Request in accordance with the terms of Section 2.03, any Term Benchmark Loan shall on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), be converted by the Administrative Agent to, and shall constitute, an ABR Loan on such day.

(b) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark 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 (x) if a Benchmark Replacement is determined in accordance with clause (1) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark (including any related adjustments) 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 (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 any Benchmark setting at or after 4:00 p.m. (Houston, Texas time) on the fifth (5th) 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.

(c) Notwithstanding anything to the contrary herein or in any other Loan Document, the Administrative Agent 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) The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event, (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 (f) 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) 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 the Term SOFR Rate) 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) Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Term Benchmark Borrowing or conversion to or continuation of Term Benchmark Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any request for a Term Benchmark Borrowing into a request for a Borrowing of or conversion to an ABR Borrowing. 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 Adjusted Reference Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Adjusted Reference Rate. Furthermore, if any Term Benchmark Loan is outstanding on the date of the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to the Term SOFR Rate applicable to such Term Benchmark Loan, then until such time as a Benchmark Replacement is implemented pursuant to this Section 3.03, any Term Benchmark Loan shall on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), be converted by the Administrative Agent to, and shall constitute, an ABR Loan on such day.

Section 3.04. Prepayments.

(a) Optional Prepayments. The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with Section 3.04(b); provided that, the Borrower shall not be permitted to prepay the Term Loans if, both immediately before and after giving pro forma effect to such prepayment, the Unused Availability is less than 20% of the Revolving Loan Limit then in effect.

(b) Notice and Terms of Optional Prepayment. The Borrower shall notify the Administrative Agent by telephone (confirmed by facsimile or other electronic transmission acceptable to the Administrative Agent) of any prepayment hereunder (i) in the case of prepayment of a Term Benchmark Borrowing, not later than 12:00 noon, Houston, Texas time, three Business Days before the date of prepayment, or (ii) in the case of prepayment of an ABR Borrowing, not later than 12:00 noon, Houston, Texas time, one Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Revolving Commitments as contemplated by Section 2.06(b), then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.06(b). Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each 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 as provided in Section 2.02. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. The Borrower may repay Revolving Loans without having to ratably repay Term Loans and may repay Term Loans without having to ratably repay Revolving Loans; provided that any voluntary repayments of Revolving Loans must be repaid ratably among Revolving Lenders and any voluntary repayments of Term Loans must be repaid ratably among the Term Lenders. Prepayments shall be accompanied by accrued interest to the extent required by Section 3.02 and any break funding payments required by Section 5.02.

(c) Mandatory Prepayments.

(i) If, after giving effect to any termination or reduction of the Aggregate Maximum Credit Amounts pursuant to Section 2.06(b) or any reduction in the Aggregate Elected Commitment Amounts pursuant to Section 2.06(c) (other than a reduction pursuant to sub-clause (viii) thereof, which shall be governed by the terms of clause (c)(ii) below), the total Revolving Credit Exposures exceeds the Revolving Loan Limit, then the Borrower shall (A) prepay the Borrowings of Revolving Loans on the date of such termination or reduction in an aggregate principal amount equal to such excess, and (B) if any excess remains after prepaying all of the Borrowings of Revolving Loans as a result of an LC Exposure, pay to the Collateral Agent on behalf of the Revolving Lenders an amount equal to such excess to be held as cash collateral as provided in Section 2.08(j).

(ii) Upon any redetermination of the Borrowing Base pursuant to Section 2.07(c), if the Aggregate Balance exceeds the Borrowing Base after giving effect to the redetermined or adjusted Borrowing Base, then the Borrower shall take one or more of the following actions to cure the Borrowing Base Deficiency: (A) deliver to the Administrative Agent and the Collateral Agent within thirty days after receipt of such New Borrowing Base Notice, petroleum engineering information and Mortgages covering additional Oil and Gas Properties of the Credit Parties not previously included in the immediately preceding Reserve Report with a value and quality satisfactory to all of the Lenders in their sole discretion sufficient to eliminate such Borrowing Base Deficiency or (B) prepay the Borrowings 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, pay to the Collateral Agent on behalf of the Revolving Lenders an amount equal to such excess to be held as cash collateral as provided in Section 2.08(j). The Borrower may make such prepayment either, at its election, (1) in one lump sum payment on or before the date that is 30 days following the receipt by the Borrower of the New Borrowing Base Notice in accordance with Section 2.07(d) or (2) in five payments, the first of which being due on the date that is 30 days following the date of receipt by the Borrower of the New Borrowing Base Notice in accordance with Section 2.07(d) and each subsequent payment being due and payable on the same day in each of the subsequent calendar months; 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; provided further, that no such fractional payment shall be less than 1/5 of the applicable Borrowing Base Deficiency. Any prepayment pursuant to this Section 3.04(c)(ii) shall be applied entirely to outstanding Revolving Loans (so long as the principal balance of the outstanding Revolving Loans is greater than or equal to the amount of the required prepayment). The Borrower shall notify the Administrative Agent in writing of the Borrower's election in respect of clause (A) or (B) of the immediately preceding sentence within 10 days following the receipt of the New Borrowing Base Notice in accordance with Section 2.07(d), and any failure by the Borrower to notify the Administrative Agent within such 10 day period shall be deemed an election to prepay the Borrowings in accordance with clause (B)(1) of the preceding sentence.

(iii) Upon any adjustment to the amount of the Borrowing Base in accordance with Section 2.07(e), Section 2.07(f) or Section 8.13(c), if the Aggregate Balance exceeds the Borrowing Base after giving effect to such Borrowing Base adjustment, then the Borrower shall immediately (A) prepay the Revolving Borrowings in an aggregate principal amount equal to such excess, (B) if any excess remains after prepaying all Revolving Borrowings, prepay the Term Borrowings in an aggregate principal amount equal to such remaining excess, and (C) to the extent that any excess remains after prepaying all Revolving Borrowings and all Term Borrowings as a result of any LC Exposure, pay to the Collateral Agent on behalf of the Revolving Lenders an amount equal to such remaining excess to be held as cash collateral as provided in Section 2.08(j). In the case of an adjustment in accordance with Section 2.07(e) or Section 2.07(f), the Borrower shall be obligated to make such prepayment in one lump sum payment on the same Business Day as such adjustment to the Borrowing Base. In the case of an adjustment in accordance with Section 8.13(c), the Borrower shall be obligated to make such prepayment in one lump sum payment on or before the date that is two Business Days after the date upon which the Borrower receives notice from the Administrative Agent of such excess.

(iv) Within (A) two (2) Business Days following the end of each calendar month, and (B) if a Default, Event of Default or Borrowing Base Deficiency has occurred and is continuing, two (2) Business Days following the end of each calendar week (such day, whether pursuant to clause (A) or (B), the "Excess Cash Test Day"), if Excess Cash exceeds the Excess Cash Threshold, the Borrower shall (1) prepay the Revolving Borrowings in an aggregate principal amount equal to the amount by which Excess Cash exceeds the Excess Cash Threshold (such amount, the "Excess Amount") on the Excess Cash Test Day, (2) if any Excess Amount remains after prepaying all Revolving Borrowings, prepay the Term Borrowings in the aggregate principal amount equal to such remaining Excess Amount, and (3) if any Excess Amount remains after prepaying all of the Revolving Borrowings and all Term Borrowings as a result of an LC Exposure, pay to the Collateral Agent on behalf of the Revolving Lenders an amount equal to the remaining Excess Amount to be held as cash collateral as provided in Section 2.08(j), in each case as soon as reasonably practicable but no later than (i) in the case of a Term Benchmark Loan, the end of the current Interest Period (but no later than 30 days after the applicable Excess Cash Test Day) or (ii) in the case of an ABR Loan or to cash collateralize LC Exposure, within three (3) Business Days. Each prepayment under this Section 3.04(c)(iv) shall be accompanied, on the date of such prepayment, by a notice from the Borrower to the Administrative Agent specifying (x) the amount of such prepayment, (y) the Borrowings that are being prepaid by such prepayment, and (z) the date of such prepayment, which notice may be delivered electronically.

(v) Each prepayment of Borrowings pursuant to this Section 3.04(c) shall be applied, subject to the proviso below, first, ratably to any ABR Borrowings then outstanding, and, second, to any Term Benchmark Borrowings then outstanding, and if more than one Term Benchmark Borrowing is then outstanding, to each such Term Benchmark Borrowing in order of priority beginning with the Term Benchmark Borrowing with the least number of days remaining in the Interest Period applicable thereto and ending with the Term Benchmark Borrowing with the most number of days remaining in the Interest Period applicable thereto.

(vi) Each prepayment of Borrowings pursuant to this Section 3.04(c) shall be applied ratably to the Loans included in the prepaid Borrowings. 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. Prepayments permitted or required under this Section 3.04 shall be without premium or penalty, except as required under Section 5.02.

Section 3.05. Fees.

(a) Commitment Fees. Except as otherwise provided in Section 2.09(a)(iii), the Borrower agrees to pay to the Administrative Agent for the account of each Revolving Lender a commitment fee, which shall accrue at the applicable Commitment Fee Rate on the average daily amount of the unused amount of the Revolving Commitment of such Revolving Lender during the period from and including the Effective Date to but excluding the Termination Date. Accrued commitment fees shall be payable in arrears on the date that is fifteen days following the last day of March, June, September and December of each year and on the Termination Date, commencing on the first such date to occur after the Effective Date. 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 commitment fees 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. Except as otherwise provided in Section 2.09(a)(iii), the Borrower agrees to pay (i) to the Administrative Agent for the account of each Revolving Lender a participation fee with respect to its participations in each outstanding Letter of Credit which shall accrue at the same Applicable Margin used to determine the interest rate applicable to Revolving Loans that are comprised of Term Benchmark Loans on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Revolving Lender's Revolving Commitment terminates and the date on which such Revolving Lender ceases to have any LC Exposure, provided that in no event shall such participation fee be less than $500 during any fiscal year, (ii) to the applicable Issuing Bank a fronting fee as negotiated with such Issuing Bank, and (iii) to the applicable Issuing Bank, for its own account, its 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 date that is fifteen days following such last day, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the Termination Date and any such fees accruing after the Termination Date shall be payable on demand. Any other fees payable to any Issuing Bank pursuant to this Section 3.05(b) shall be payable within 10 days after demand. All participation fees and fronting 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) Agent Fees. The Borrower agrees to pay to the applicable Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrower and such Agent.

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., Houston, Texas time, on the date when due, in immediately available funds, without defense, deduction, recoupment, set-off or counterclaim. Fees, once paid, shall be fully earned and shall not be refundable under any circumstances. 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 Banks 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 (i) 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 (ii) 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 Exposure resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations in LC Exposure 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) participations in the Loans and participations in LC Exposure 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 Exposure; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such 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 Exposure to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate 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 set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such 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 Banks 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 Banks, 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 Banks, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or such 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 NYFRB Rate.

Section 4.03. 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(a), Section 2.08(d), Section 2.08(e) or Section 4.02, or otherwise hereunder, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), (a) 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 (b) 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 (a) and (b) above, in any order as determined by the Administrative Agent in its discretion. After acceleration or maturity of the Loans, all principal will be paid ratably as provided in Section 10.02(c).

Section 4.04. Disposition of Proceeds. The Security Instruments contain an assignment by the Borrower and/or the Guarantors unto 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 Indebtedness and other obligations described therein and secured thereby. Notwithstanding the assignment contained in such Security Instruments, until the occurrence of an Event of Default, (a) the Administrative Agent, the Collateral Agent and the Lenders agree that they will neither notify the purchaser or purchasers of such production nor take any other action to cause such proceeds to be remitted to the Administrative Agent, the Collateral Agent or the Lenders, but the Lenders will instead permit such proceeds to be paid to the Borrower and its Restricted Subsidiaries and (b) the Lenders hereby authorize the Agents to take such actions as may be necessary to cause such proceeds to be paid to the Borrower and/or such Restricted Subsidiaries.

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 or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, any Lender or any Issuing Bank;

(ii) subject any Lender (including any Issuing Bank), the Administrative Agent, or the Collateral Agent to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes or (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or any Issuing Bank or the applicable offshore interbank market any other condition, cost or expense (in each case, 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 Issuing Bank, 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 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, the Administrative Agent, or the Collateral Agent (all such Persons, a "Recipient") (whether of principal, interest or otherwise), then the Borrower will pay to such Lender, such Issuing Bank or such Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, such Issuing Bank or such Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or any 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 such Issuing Bank's capital or on the capital of such Lender's or such 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 such Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Bank's policies and the policies of such Lender's or such Issuing Bank's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company for any such reduction suffered.

(c) Certificates. A certificate of a Lender or an Issuing Bank setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or such Issuing Bank or its holding company, as the case may be, as specified in Section 5.01(a) or (b) (together with reasonably detailed calculations thereof) shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender or such Issuing Bank, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof. Notwithstanding anything to the contrary in this Section 5.01, no Lender or Issuing Bank shall be entitled to compensation under this Section 5.01 unless such Lender or Issuing Bank is generally imposing similar charges on other similarly situated borrowers under comparable credit facilities.

(d) Effect of Failure or Delay in Requesting Compensation. Failure or delay on the part of any Recipient to demand compensation pursuant to this Section 5.01 shall not constitute a waiver of such Recipient's right to demand such compensation; provided that the Borrower shall not be required to compensate a Recipient pursuant to this Section 5.01 for any increased costs or reductions incurred more than 180 days prior to the date that such Recipient notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Recipient'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 180-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 Term Benchmark Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default, an optional or mandatory prepayment of Loans or assignment), (b) the conversion of any Term Benchmark Loan into an ABR Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Term Benchmark Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 3.04(b) and is revoked in accordance therewith), or (d) the assignment of any Term Benchmark 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 5.04(b), then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event (but excluding any loss of anticipated profit or margin).

A certificate of any Lender setting forth in reasonable detail 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 10 days after receipt thereof.

Section 5.03. Taxes.

(a) 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 free and clear of and without deduction or withholding for any Taxes, except as required by applicable law (as determined in the good faith discretion of a Withholding Agent); provided that if any Withholding Agent shall be required by applicable law to deduct or withhold any Taxes from such payments, then (i) if such Tax is an Indemnified Tax, the sum payable by the Borrower or any Guarantor shall be increased as necessary so that after making all required deductions or withholding (including deductions or withholding of Indemnified Taxes applicable to additional sums payable under this Section 5.03), the Administrative Agent, the Collateral Agent or the Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) the applicable Withholding Agent shall be entitled to make such deductions or withholdings and (iii) the applicable Withholding Agent shall pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law.

(b) Payment of Other Taxes by the Borrower. 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.

(c) Indemnification by the Credit Parties. The Credit Parties shall jointly and severally indemnify the Administrative Agent, the Collateral Agent and each Lender, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 5.03) payable or paid by the Administrative Agent, the Collateral Agent or such Lender, as the case may be, on or with respect to any payment to such Administrative Agent, the Collateral Agent or Lender or required to be withheld or deducted from a payment to such Administrative Agent, the Collateral Agent or Lender and any reasonable out-of-pocket expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate of the Administrative Agent, the Collateral Agent or a Lender as to the amount of such payment or liability under this Section 5.03 shall be delivered to the Borrower and shall be conclusive absent manifest error.

(d) Indemnification by the Lenders. Each Lender shall severally indemnify the applicable Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Credit Parties have not already indemnified such Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 12.04(c) 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 any 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 applicable Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Agents to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by such Agent to the Lender from any other source against any amount due to such Agent under this clause (d).

(e) Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrower or a Guarantor to a Governmental Authority pursuant to this Section 5.03, the Borrower 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.

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the 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 of withholding. 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(f)(ii)(A), Section 5.03(f)(ii)(B) and Section 5.03(g) 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 Withholding Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign 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 Foreign 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 Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign 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 Foreign 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" related to the Borrower as described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, or IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or Exhibit G-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign 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; and

(C) any Foreign 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 Foreign 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.

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.

(g) FATCA. 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 fails 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 the 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 the Borrower or 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, if any, to deduct and withhold from such payment. Solely for purposes of this Section 5.03(g), "FATCA" shall include any amendments made to FATCA after the Effective Date.

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) Status of Administrative Agent. On or prior to the date of this Agreement, the Administrative Agent shall (and any successor or replacement Administrative Agent shall, on or before the date on which it becomes the Administrative Agent hereunder), deliver to the Borrower two duly executed copies of either (i) IRS Form W-9, or (ii) IRS Form W-8ECI (with respect to any payments to be received on its own behalf) and IRS Form W-8IMY (for all other payments), in each case establishing that Borrower can make payments to Administrative Agent without deduction or withholding of any Taxes imposed by the United States, including Taxes imposed under FATCA. On or prior to the date of this Agreement, the Collateral Agent (and any successor or replacement Collateral Agent shall, on or before the date on which it becomes the Collateral Agent under any Loan Document), deliver to the Borrower two duly executed copies of IRS Form W-9 establishing that Borrower can make payments to Collateral Agent without deduction or withholding of any Taxes imposed by the United States, including Taxes imposed under FATCA. Each 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 and the other Agents in writing of its legal inability to do so.

(i) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 5.03 (including by the payment of additional amounts pursuant to this Section 5.03), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party 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 (i) (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 (i), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this clause (i) the payment of which 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 clause 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 indemnifying party or any other Person.

(j) Survival. Each party's obligations under this Section 5.03 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all obligations under the Loan Documents.

(k) Defined Terms. For purposes of this Section 5.03, the term "applicable law" includes FATCA and the term "Lender" includes any Issuing Bank.

Section 5.04. Mitigation Obligations; Replacement of Lenders.

(a) Designation of Different Lending Office. If any Lender requests compensation under Section 5.01, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.03, or if any Lender's obligation to make or maintain Term Benchmark Loans is suspended pursuant to Section 5.05, then such Lender shall (at the request of the 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 (i) would eliminate or reduce amounts payable pursuant to Section 5.01 or Section 5.03, as the case may be, in the future or would allow the Lender to make Term Benchmark Loans and (ii) 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.

(b) Replacement of Lenders. If any Lender requests compensation under Section 5.01, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.03 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 5.04(a), or if any Lender's obligation to make or maintain Term Benchmark Loans is suspended pursuant to Section 5.05, or if any Lender becomes a Defaulting Lender or Non-Consenting Lender hereunder, 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 related 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 received the prior written consent of the Administrative Agent, the Collateral Agent, and each Issuing Bank, which consent shall not unreasonably be withheld, (ii) such 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, 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), (iii) 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 thereafter, and (iv) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent. 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. Notwithstanding the foregoing, a Lender shall not be required to make any such assignment and delegation if such Lender is a Secured Swap Provider with any outstanding Swap Agreements with any Credit Party (to the extent obligations under such Swap Agreements constitute Indebtedness), unless on or prior thereto, all such Swap Agreements have been terminated or novated to another Person and such Lender (or its Affiliate) shall have received payment of all amounts, if any, payable to it in connection with such termination or novation.

Section 5.05. Illegality. 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 Term Benchmark 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 Term Benchmark Loans shall be suspended (the "Affected Loans") until such time as such Lender may again make and maintain such Term Benchmark 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; provided that such ABR Loans shall not bear interest by reference to the Term SOFR Rate pursuant to clause (c) of the definition thereof.

ARTICLE VI.

CONDITIONS PRECEDENT

Section 6.01. Effective Date. 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 is satisfied (or waived in accordance with Section 12.02):

(a) The Agents, the Arrangers and the Lenders shall have received all commitment, facility and agency fees and all other fees and amounts due and payable on or prior to the Effective Date, and reimbursement or payment of all reasonable and documented out-of-pocket expenses required to be reimbursed or paid by the Borrower hereunder (including, without limitation, the fees and expenses of Bracewell LLP, as counsel to the Agents).

(b) The Administrative Agent shall have received a certificate of the Secretary or an Assistant Secretary of the Borrower and each Restricted Subsidiary setting forth (i) resolutions of its board of directors (or comparable governing body) with respect to the authorization of the Borrower or such Restricted Subsidiary 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 Restricted Subsidiary (A) who are authorized to sign the Loan Documents to which the Borrower or such Restricted Subsidiary is a party and (B) 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 articles or certificate of formation and limited liability company agreements (or comparable organizational documents for any Credit Parties that are not limited liability companies) of the Borrower and such Restricted Subsidiary, certified as being true and complete. The Administrative Agent, the Collateral 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 customary certificates as of a date prior to the Effective Date reasonably satisfactory to the Administrative Agent of the appropriate State agencies where such entity is formed or incorporated and in each other material jurisdiction where such entity is qualified to do business, in each case, with respect to the existence, qualification and good standing of the Borrower and each Restricted Subsidiary.

(d) The Administrative Agent shall have received from each party hereto counterparts (in such number as may be requested by the Administrative Agent) of this Agreement signed on behalf of such party.

(e) The Administrative Agent shall have received duly executed Notes payable to each Lender requesting a Note, if any, in a principal amount equal to (i) its Maximum Credit Amount less its Term Loan Commitment in the case of the Revolving Lenders, and (ii) its Term Loan Commitment in the case of the Term Lenders.

(f) The Administrative Agent shall have received from each party thereto duly executed counterparts (in such number as may be requested by the Administrative Agent) of the Security Instruments required as of the Effective Date, including the Guaranty Agreement, the Pledge and Security Agreement, the Mortgages and the other Security Instruments described on Exhibit C. In connection with the execution and delivery of the Security Instruments, the Administrative Agent shall:

(i) have received Security Instruments that will, when properly recorded (or when the applicable financing statements related thereto are properly filed or such other actions needed to perfect are taken) create first priority, perfected Liens (subject only to Excepted Liens identified in clauses (a) to (d) and (f) of the definition thereof, but subject to the provisos at the end of such definition) on at least 85% of the total present value (using a 10% discount rate) of the Oil and Gas Properties evaluated and classified as Proved Reserves in the Initial Reserve Report; and

(ii) have received certificates, together with undated, blank stock powers for each such certificate, representing all of the issued and outstanding Equity Interests of each of the Credit Parties (other than the Borrower) that are evidenced by certificates.

(g) The Administrative Agent shall have received an opinion of Vinson & Elkins L.L.P., special counsel to the Borrower and the Guarantors, in form and substance reasonably acceptable to the Administrative Agent and its counsel.

(h) The Administrative Agent shall have received a copy of the Initial Reserve Report, accompanied by a certificate covering the matters described in Section 8.12(c) (other than Section 8.12(c)(iv) and (c)(v)).

(i) The Administrative Agent shall have received certificates of insurance coverage of the Credit Parties evidencing that the Credit Parties are carrying insurance in accordance with Section 7.12.

(j) The Administrative Agent shall have received, on or prior to the Effective Date, title information (including usual and customary title opinions in the Borrower's possession) setting forth the status of title to at least 85% of the total present value (using a 10% discount rate) of the Borrowing Base Properties in the Initial Reserve Report consistent with usual and customary standards for the geographic regions in which such Borrowing Base Properties are located.

(k) The Administrative Agent shall have received customary UCC search results and county-level real property record search results reflecting no prior Liens encumbering the Properties of the Borrower and Guarantors for each jurisdiction requested by the Administrative Agent other than those being assigned or released on or prior to the Effective Date or Liens permitted by Section 9.03.

(l) The Administrative Agent shall have received a certificate from a Responsible Officer of the Borrower that attached to such certificate is a true, accurate and complete copy of each Material Contract.

(m) The Administrative Agent shall have received a true, correct and complete copy of the Initial Financial Statements.

(n) The Administrative Agent shall have received a certificate from the Chief Financial Officer of the Borrower substantially in the form of Exhibit I.

(o) Since December 31, 2025, there shall not have occurred any event, development or circumstance that has resulted in a Material Adverse Effect.

(p) The Administrative Agent shall have received a certificate dated as of the Effective Date from a Responsible Officer of the Borrower stating that (A) the representations and warranties of the Borrower and the Guarantors set forth in this Agreement and in the other Loan Documents are true and correct in all material respects on and as of the Effective Date, except to the extent any such representations and warranties (i) are expressly limited to an earlier date, in which case, such representations and warranties continue to be true and correct in all material respects as of such specified earlier date, or (ii) are contained in Section 7.23 or which are already qualified by materiality, Material Adverse Effect or a similar qualification, in each such case under this clause (ii), such representations and warranties shall be true and correct in all respects; and (B) no Default has occurred and is continuing.

(q) The Borrower shall have delivered to the Administrative Agent copies of all material environmental reports, including any phase 1 reports, that have been conducted on the Oil and Gas Properties of the Borrower and the Guarantors since January 1, 2025.

(r) The Administrative Agent shall have received sufficient evidence (including, without limitation, payoff letters, mortgage releases, lien releases and UCC-3) indicating that, on or prior to the Effective Date, (i) all amounts owing in respect of the Existing Credit Agreements will be, or have been, repaid in full and the obligations of the Borrower and the other Credit Parties under the Existing Credit Agreements and all documents in connection therewith will be, or have been, terminated and satisfied in full and (ii) acceptable provisions have been made for the termination of the Liens and guarantees existing in respect of such Existing Credit Agreements and all documents in connection therewith.

(s) The Administrative Agent shall have received true, correct and complete copies of the Effective Date Preferred Equity Documents, which shall be in the form provided to the Administrative Agent on or prior to October 6, 2026 or otherwise in form and substance reasonably satisfactory to the Lenders. The Borrower shall have received net cash proceeds of not less than $450,000,000 from the issuance of the Effective Date Preferred Equity.

(t) After giving pro forma effect to the Borrowings on the Effective Date, the Unused Availability is not less than 20% of the Revolving Loan Limit then in effect.

(u) After giving pro forma effect to the Transactions, the issuance by the Borrower of the Effective Date Preferred Equity and the use of the proceeds hereof and thereof on the Effective Date, (a) the Consolidated Net Leverage Ratio as of such date is less than 2.00 to 1.00 and (b) the ratio of Total Debt as of such date to Total Capitalization as of such date is not greater than 50%.

(v) The Administrative Agent shall have received at least five (5) Business Days prior to the Effective Date, (i) from the Credit Parties, to the extent reasonably requested in writing by the Lenders, the Collateral Agent or the Administrative Agent at least ten (10) Business Days prior to Effective Date, all documentation and other information that they reasonably determine is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act and (ii) from the Borrower, a Beneficial Ownership Certification in relation to it (or a certification that it qualifies for an express exclusion from the "legal entity customer" definition under the Beneficial Ownership Regulations).

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 or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the Effective Date specifying its objection thereto. All documents executed or submitted pursuant to this Section 6.01 by and on behalf of the Borrower or any of its Subsidiaries shall be in form and substance reasonably satisfactory to the Administrative Agent and the Lenders. The Administrative Agent shall notify the Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Loans and of the Issuing Banks to issue Letters of Credit hereunder shall not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to Section 12.02) at or prior to 1:00 p.m. Houston, Texas time, on or before December 31, 2026.

Section 6.02. Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of each Issuing Bank to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(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, Event of Default, or Borrowing Base Deficiency shall have occurred and be continuing and, in the case of a Revolving Borrowing, the total Revolving Credit Exposures shall not exceed the Revolving Loan Limit.

(b) 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 Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable, except to the extent any such representations and warranties (i) 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 continue to be true and correct in all material respects as of such specified earlier date, or (ii) are contained in Section 7.23 or which are already qualified by materiality, Material Adverse Effect or a similar qualification, in each such case under this clause (ii), such representations and warranties shall be true and correct in all respects.

(c) The receipt by the Administrative Agent of a Borrowing Request in accordance with Section 2.03 or a request for a Letter of Credit (or 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 Section 6.02(a) and (b).

ARTICLE VII.

REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lenders on the Effective Date and on each other date specified in this Agreement and the other Loan Documents for representations and warranties to be made or deemed made that:

Section 7.01. Organization; Powers. Each of the Borrower and the Restricted Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority, and has all material governmental licenses, authorizations, consents and approvals necessary, to own its assets and to carry on its business as now conducted, and is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where failure to have such power, authority, licenses, authorizations, consents, approvals and qualifications could not reasonably be expected to have a Material Adverse Effect.

Section 7.02. Authority; Enforceability. The Transactions are within the Borrower's and each Restricted Subsidiary's corporate, limited liability company or partnership powers, as applicable, and have been duly authorized by all necessary corporate, limited liability company or partnership action, as applicable, and, if required, stockholder, member or manager action (including, without limitation, any action required to be taken by any class of directors or managers of the Borrower or any other Person, whether interested or disinterested, in order to ensure the due authorization of the Transactions). Each Loan Document to which the Borrower and each Restricted Subsidiary is a party has been duly executed and delivered by the Borrower and such Restricted Subsidiary and constitutes a legal, valid and binding obligation of the Borrower and such Restricted Subsidiary, as applicable, each enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Section 7.03. Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or any other third Person (including shareholders or any class of directors or managers, as applicable, whether interested or disinterested, of the Borrower or any other Person), nor is any such consent, approval, registration, filing or other action necessary for the validity or enforceability of any Loan Document or the consummation of the transactions contemplated thereby, except such as have been obtained or made and are in full force and effect other than (i) the recording and filing of the Security Instruments as required by this Agreement and (ii) those third party approvals or consents which, if not made or obtained, would not cause a Default hereunder, could not reasonably be expected to have a Material Adverse Effect or do not have an adverse effect on the enforceability of the Loan Documents, (b) will not violate any applicable material provision of law or regulation or any order of any Governmental Authority, except as could not reasonably be expected to have a Material Adverse Effect, (c) will not violate the charter, bylaws or other organizational documents of the Borrower or any Restricted Subsidiary, (d) will not violate or result in a default under any indenture in respect of Material Debt, agreement or other instrument binding upon the Borrower or any Restricted Subsidiary or any of their Properties, or give rise to a right thereunder to require any payment to be made by the Borrower or such Restricted Subsidiary, except for violations that could not individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, and (e) will not result in the creation or imposition of any Lien on any Property of the Borrower or any Restricted Subsidiary (other than the Liens created by the Loan Documents).

Section 7.04. Financial Condition; No Material Adverse Effect.

(a) The Borrower has heretofore furnished to the Lenders the Initial Financial Statements. Such financial statements present fairly in all material respects the financial condition of the Borrower and its Consolidated Restricted Subsidiaries as of the date of such Initial Financial Statements in accordance with GAAP.

(b) Since December 31, 2025, there has been no event, development or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.

(c) Neither the Borrower nor any Restricted Subsidiary has on the Effective Date any material Debt (including Disqualified Capital Stock) or any contingent liabilities, off-balance sheet liabilities or partnerships, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments, except as referred to or reflected or provided for in the Initial Financial Statements and as permitted under this Agreement and adequate reserves for such items have been made in accordance with GAAP.

Section 7.05. Litigation.

(a) Except as set forth on Schedule 7.05, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened in writing against the Borrower or any Subsidiary which could reasonably be expected, individually or in the aggregate, to result in any Material Adverse Effect. There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened in writing against the Borrower or any Subsidiary that involve the legality, validity, or enforceability of any Loan Document or the Transactions.

(b) Since the Effective Date, there has been no change in the status of the matters disclosed in Schedule 7.05 that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

Section 7.06. Environmental Matters. Except for such matters as set forth on Schedule 7.06 or that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect:

(a) the Borrower and its Restricted Subsidiaries and each of their respective Properties and respective operations thereon (i) are and, for the past five
(5) years, have been in compliance with all applicable Environmental Laws; and (ii) have not received written notice of any conditions, events, or incidents in connection with any operation at such Properties that could reasonably be expected to interfere with or prevent such compliance or continued compliance with Environmental Laws;

(b) the Borrower and its Restricted Subsidiaries have obtained all Environmental Permits required for their respective operations and respective ownership of their Properties, with all such Environmental Permits being currently in full force and effect, and none of Borrower or its Restricted Subsidiaries has received any written notice or otherwise has knowledge that any such existing Environmental Permit will be revoked or that any application for any new Environmental Permit or renewal of any existing Environmental Permit will be protested or denied;

(c) there are no claims, demands, suits, orders, inquiries, or proceedings concerning any violation of, or any liability (including as a potentially responsible party) under, any applicable Environmental Laws that is pending or, to Borrower's knowledge, threatened against the Borrower or any Restricted Subsidiary or any of their respective Properties or as a result of any operations at such Properties;

(d) none of the Properties of the Borrower or any Restricted Subsidiary contain or have contained any: (i) underground storage tanks in violation of or giving rise to material liabilities under Environmental Law; (ii) asbestos-containing materials requiring removal pursuant to Environmental Law; (iii) landfills or dumps requiring an Environmental Permit pursuant to Environmental Law; (iv) hazardous waste management units as defined pursuant to RCRA or any comparable state law; or (v) sites on or nominated for the National Priority List promulgated pursuant to CERCLA or any state remedial priority list promulgated or published pursuant to any comparable state law;

(e) there has been no Release or, to the Borrower's knowledge, threatened Release of Hazardous Materials at, on, under or from the Borrower's or any Restricted Subsidiary's Properties in violation of Environmental Law, there are no ongoing investigations, remediations, abatements, removals, or monitorings of Hazardous Materials required under applicable Environmental Laws at such Properties and, to the knowledge of the Borrower, none of such Properties are adversely affected by any Release or threatened Release of a Hazardous Material originating or emanating from any other real property, and no Borrower or Restricted Subsidiary has filed or failed to file, any notice required of such Persons under applicable Environmental Law related to a reportable Release of Hazardous Materials;

(f) neither the Borrower nor any Restricted Subsidiary has received any written notice asserting an alleged liability or obligation under any applicable Environmental Laws with respect to the investigation, remediation, abatement, removal, or monitoring of any Hazardous Materials at, under, or Released or threatened to be Released from the Borrower's or any Restricted Subsidiary's Properties or any real property offsite the Borrower's or any Restricted Subsidiary's Properties, including a letter or request for information under Section 104(e) of CERCLA (42 U.S.C. § 9604);

(g) there has been no exposure of any Person or Property to any Hazardous Materials as a result of or in connection with the operations and businesses of Borrower or any Restricted Subsidiary at any of the Borrower's or its Restricted Subsidiaries' Properties that could reasonably be expected to form the basis for a claim for damages or compensation;

(h) there are no conditions or circumstances associated with any of the Borrower's, nor any Restricted Subsidiary's currently or, to the Borrower's knowledge, previously owned or leased real properties that could reasonably be expected to give rise to the imposition of any material liabilities under any Environmental Laws against the Borrower or any of its Restricted Subsidiaries as a result of any of their operations at such properties; and

(i) the Borrower and its Subsidiaries have made available to the Lenders complete and correct copies of all environmental site assessment reports, investigations, studies, and analyses that are in any of the Borrower's or the Restricted Subsidiaries' possession or reasonable control and relating to their respective Properties or operations thereon.

Section 7.07. Compliance with the Laws and Agreements; No Defaults or Borrowing Base Deficiency.

(a) Each of the Borrower and each Restricted Subsidiary (i) is in compliance with all Governmental Requirements applicable to it or its Property and all agreements and other instruments binding upon it or its Property, and (ii) possesses all licenses, permits, franchises, exemptions, approvals and other governmental authorizations necessary for the ownership of its Property and the conduct of its business, except, in the case of (i) and (ii), where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(b) No Default or Borrowing Base Deficiency has occurred and is continuing.

Section 7.08. Investment Company Act. Neither the Borrower nor any Restricted Subsidiary is required to be registered as an "investment company" under, the Investment Company Act of 1940, as amended.

Section 7.09. Taxes. Each of the Borrower and each of the Restricted Subsidiaries has timely filed or caused to be filed all material Tax returns and reports required to be filed and has paid or caused to be paid all material federal, state and other Taxes (including in its capacity as a withholding agent) levied or imposed upon them or their properties, income or assets otherwise due and payable, in each case, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such Restricted Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP, or (b) to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect. No Tax Lien (other than Tax Liens that constitute Excepted Liens) has been filed. Except as have not had and would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) neither the Borrower nor any of its Restricted Subsidiaries is involved in an audit, investigation or similar proceeding that is currently being conducted or that has been initiated in writing and remains pending or, to the knowledge of the Borrower, has been threatened in writing with respect to the Borrower or any of its Restricted Subsidiaries in respect of any Tax and (ii) there is no outstanding claim, assessment or deficiency against the Borrower or any of its Restricted Subsidiaries for any Taxes that has been asserted in writing by any Governmental Authority other than those being contested in good faith through appropriate proceedings and for which adequate reserves have been established on the books of the Borrower and such Restricted Subsidiary in accordance with GAAP.

Section 7.10. ERISA. Except for such matters that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect:

(a) The Borrower, its Restricted Subsidiaries and each ERISA Affiliate have complied with ERISA, the Code and any applicable law regarding each Plan.

(b) Each Plan (other than Multiemployer Plan) is, and has been, established and maintained in substantial compliance with its terms, ERISA, the Code and any applicable law.

(c) No act, omission or transaction has occurred with respect to a Plan which could reasonably be expected to result in imposition on the Borrower, any Restricted Subsidiary or any ERISA Affiliate (whether directly or indirectly) of (i) either a civil penalty assessed pursuant to subsections (c), (i), (l) or (m) of section 502 of ERISA or a tax imposed pursuant to Chapter 43 of Subtitle D of the Code or (ii) breach of fiduciary duty liability damages under section 409 of ERISA.

(d) Full payment when due has been made of all amounts which the Borrower, its Restricted Subsidiaries or any ERISA Affiliate is required under the terms of each Plan or applicable law to have paid as contributions to such Plan as of the Effective Date.

(e) No ERISA Event has occurred or is reasonably expected to occur.

(f) Neither the Borrower, its Restricted Subsidiaries nor any ERISA Affiliate sponsors, maintains, contributes to or has any liability with respect to an employee welfare benefit plan, as defined in section 3(1) of ERISA, including any such plan that provides benefits to former employees of such entities other than as required by applicable law, that may not be terminated by the Borrower, a Restricted Subsidiary or any ERISA Affiliate in its sole discretion at any time without any material liability.

(g) Neither the Borrower, its Restricted Subsidiaries nor any ERISA Affiliate sponsors, maintains or contributes to or has any liability with respect to, or has at any time in the six-year period preceding the Effective Date sponsored, maintained or contributed to or had any liability with respect to, any employee pension benefit plan, as defined in section 3(2) of ERISA, that is subject to Title IV of ERISA, section 302 of ERISA or section 412 of the Code.

Section 7.11. Disclosure; No Material Misstatements. None of the reports, financial statements, certificates or other factual information furnished by or on behalf of the Borrower or any Restricted Subsidiary in writing to the Administrative Agent or any Lender or any of their Affiliates in connection with the negotiation of this Agreement or any other Loan Document or delivered hereunder or under any other Loan Document (as modified or supplemented by other information so furnished), taken as a whole, contains any untrue statement of material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time, it being understood that (i) any such projected financial information is merely a prediction as to future events and is not to be viewed as fact, (ii) such projected financial information is subject to significant uncertainties and contingencies, many of which are beyond the control of the Borrower or any of its Subsidiaries and (iii) 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 significantly from the projected results and such differences may be material. There are no statements or conclusions in any Reserve Report which are based upon or include materially misleading information or fail to take into account material information regarding the matters reported therein, it being understood that projections concerning volumes attributable to the Oil and Gas Properties of the Borrower and its Restricted Subsidiaries and production and cost estimates contained in each Reserve Report are necessarily based upon professional opinions, estimates and projections and that the Borrower and its Restricted Subsidiaries do not warrant that such opinions, estimates and projections will ultimately prove to have been accurate. The information included in any Beneficial Ownership Certification provided to any Lender in connection with this Agreement is true and correct in all respects as of the date delivered.

Section 7.12. Insurance. The Borrower has, and has caused all of its Restricted Subsidiaries to have with respect to its business and properties, insurance coverage in at least amounts and against such risk (including, without limitation, public liability) that are customarily insured against by business entities similarly situated and engaged in the same or a similar business for the assets and operations of the Borrower and its Restricted Subsidiaries (as determined in the reasonable business judgment of the senior management of the Borrower). The Administrative Agent and the Collateral Agent have been named as additional insureds in respect of such liability insurance policies and the Collateral Agent has been named as lender loss payee with respect to Property loss insurance. Waiver of subrogation applies in favor of the Collateral Agent in connection with any general liability policy of any Credit Party.

Section 7.13. Subsidiaries. Except as set forth on Schedule 7.13 or as disclosed in writing to the Administrative Agent (which shall promptly furnish a copy to the Lenders), which shall be a supplement to Schedule 7.13, the Borrower has no Subsidiaries. Schedule 7.13 identifies each Subsidiary as either Restricted or Unrestricted and either a Domestic Subsidiary or a Foreign Subsidiary, and each Restricted Subsidiary on Schedule 7.13 is a Wholly-Owned Subsidiary.

Section 7.14. International Operations. None of the Borrower and its Subsidiaries own, and have not acquired or made any other expenditure (whether such expenditure is capital, operating or otherwise) in or related to, any Oil and Gas Properties located outside of the geographical boundaries of the United States or in the offshore federal waters of the United States of America, except through an Unrestricted Subsidiary as disclosed in writing to the Administrative Agent.

Section 7.15. Location of Business and Offices. The Borrower's jurisdiction of organization is the State of Delaware, the name of the Borrower as listed in the public records of its jurisdiction of organization is HighPeak Energy, Inc., and the organizational identification number of the Borrower in its jurisdiction of organization is 7677183 (or, if otherwise, in each case, as set forth in a notice delivered to the Administrative Agent pursuant to Section 8.01(m) in accordance with Section 12.01). The Borrower's chief executive office is located at the address specified in Section 12.01 (or, if otherwise, as set forth in a notice delivered pursuant to Section 8.01(m) and Section 12.01). Each Subsidiary's jurisdiction of organization, name as listed in the public records of its jurisdiction of organization, organizational identification number in its jurisdiction of organization, and the location of its chief executive office is stated on Schedule 7.13 (or, if otherwise, as set forth in a notice delivered to the Administrative Agent pursuant to Section 8.01(m) in accordance with Section 12.01).

Section 7.16. Properties; Titles, Etc.

(a) Each of the Borrower and the Restricted Subsidiaries has good and defensible title to the Oil and Gas Properties evaluated in the most recently delivered Reserve Report (except for those Oil and Gas Properties that have been disposed of since the date of such Reserve Report in accordance with this Agreement or leases which have expired in accordance with their terms) and good title to all its personal Properties, in each case, free and clear of all Liens except Liens permitted by Section 9.03. After giving full effect to the Excepted Liens, the Borrower or the Restricted Subsidiary specified as the owner owns the net interests in production attributable to the Hydrocarbon Interests as reflected in the most recently delivered Reserve Report (except for those Oil and Gas Properties that have been disposed of since the date of such Reserve Report in accordance with this Agreement or leases which have expired in accordance with their terms), and the ownership of such Properties shall not in the aggregate in any material respect obligate the Borrower or such Restricted Subsidiary to bear the costs and expenses relating to the maintenance, development and operations of each such Property in an amount in excess of the working interest of each Property set forth in the most recently delivered Reserve Report that is not offset by a corresponding proportionate increase in the Borrower's or such Restricted Subsidiary's net revenue interest in such Property.

(b) All material leases and agreements necessary for the conduct of the business of the Borrower and its Restricted Subsidiaries are valid and subsisting, in full force and effect, and there exists no default or event or circumstance which with the giving of notice or the passage of time or both would give rise to a default under any such lease or leases, which could reasonably be expected to have a Material Adverse Effect.

(c) The rights and Properties presently owned, leased or licensed by the Borrower and its Restricted Subsidiaries including, without limitation, all easements and rights of way, include all rights and Properties necessary to permit the Borrower and its Restricted Subsidiaries to conduct their business in all material respects in the same manner as their business has been conducted prior to the date hereof.

(d) All of the Properties of the Borrower and its Restricted Subsidiaries which are necessary for the operation of their businesses are in good working condition (ordinary wear and tear excepted) and are maintained in accordance with prudent business standards, except to the extent that the failure to be in such condition or to be so maintained could not reasonably be expected to have a Material Adverse Effect.

(e) The Borrower and each Restricted Subsidiary owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and the use thereof by the Borrower and such Restricted Subsidiary does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. The Borrower and its Restricted Subsidiaries either own or have valid licenses or other rights to use all databases, geological data, geophysical data, engineering data, seismic data, maps, interpretations and other technical information used in their businesses as presently conducted, subject to the limitations contained in the agreements governing the use of the same, which limitations are customary for companies engaged in the business of the exploration and production of Hydrocarbons, with such exceptions as could not reasonably be expected to have a Material Adverse Effect.

Section 7.17. Maintenance of Properties. Except for such acts or failures to act as could not be reasonably expected to have a Material Adverse Effect, the Oil and Gas Properties (and Properties unitized therewith) of the Borrower and its Restricted Subsidiaries have been maintained, operated and developed in a good and workmanlike manner and in conformity with all Governmental Requirements and in conformity with the provisions of all leases, subleases or other contracts comprising a part of the Hydrocarbon Interests and other contracts and agreements forming a part of the Oil and Gas Properties of the Borrower and its Restricted Subsidiaries. Specifically in connection with the foregoing, except for those as could not be reasonably expected to have a Material Adverse Effect, (a) no Oil and Gas Property of the Borrower or any Restricted Subsidiary is subject to having allowable production reduced below the full and regular allowable (including the maximum permissible tolerance) because of any overproduction (whether or not the same was permissible at the time) and (b) none of the wells comprising a part of the Oil and Gas Properties (or Properties unitized therewith) of the Borrower or any Restricted Subsidiary is deviated from the vertical more than the maximum permitted by Governmental Requirements, and such wells are, in fact, bottomed under and are producing from, and the well bores are wholly within, the Oil and Gas Properties (or in the case of wells located on Properties unitized therewith, such unitized Properties) of the Borrower or such Restricted Subsidiary. All pipelines, wells, gas processing plants, platforms and other material improvements, fixtures and equipment owned in whole or in part by the Borrower or any of its Restricted Subsidiaries that are necessary to conduct normal operations are being maintained in a state adequate to conduct normal operations, and with respect to such of the foregoing which are operated by the Borrower or any of its Restricted Subsidiaries, in a manner consistent with the Borrower's or its Restricted Subsidiaries' past practices (other than those the failure of which to maintain in accordance with this Section 7.17 could not reasonably be expected to have a Material Adverse Effect).

Section 7.18. Imbalances; Prepayments. Except as set forth on Schedule 7.18 and thereafter included in the most recent certificate delivered pursuant to Section 8.12(c), on a net basis there are no imbalances, take or pay or other prepayments which would require the Borrower or any of its Restricted Subsidiaries to deliver Hydrocarbons produced from their Oil and Gas Properties at some future time without then or thereafter receiving full payment therefor other than imbalances, take-or-pay or other prepayments and balancing rights incurred in the ordinary course of business and which imbalances, take-or-pay, or other prepayments and balancing rights, in the aggregate, do not exceed 2.0% of the aggregate annual production of gas from the Oil and Gas Properties of the Borrower and its Restricted Subsidiaries during the most recent calendar year (on an mcf equivalent basis).

Section 7.19. Marketing of Production. Except for contracts listed and in effect on the Effective Date on Schedule 7.19, and thereafter included in the most recently delivered Reserve Report (with respect to all of which contracts the Borrower represents that it or its Restricted Subsidiaries are receiving a price for all production sold thereunder which is computed substantially in accordance with the terms of the relevant contract and are not having deliveries curtailed substantially below the subject Property's delivery capacity), no material agreements exist which are not cancelable on 60 days' notice or less without penalty or detriment for the sale of production from the Borrower's or its Restricted Subsidiaries' Hydrocarbons (including, without limitation, calls on or other rights to purchase, production, whether or not the same are currently being exercised) that (a) pertain to the sale of production at a fixed price and (b) have a maturity or expiry date of longer than six (6) months from the effective date of such agreement.

Section 7.20. Security Interests. The Indebtedness is secured by Liens in the Collateral granted in favor of the Collateral Agent, for the benefit of the Secured Parties, and such Liens are or will be perfected (in each case, to the extent contemplated by this Agreement and the Security Instruments) (i) by the filing of a UCC financing statement in the states in which each applicable Credit Party is located, (ii) by filing Mortgages affecting the Borrowing Base Properties, as-extracted collateral and/or fixtures (as applicable) in the real property or other appropriate records of the parish or county in which the applicable real property or fixtures are located, or (iii) by possession or control.

Section 7.21. Swap Agreements and Qualified ECP Guarantor. Schedule 7.21, as of the Effective Date, and thereafter included in the most recently delivered report required to be delivered by the Borrower pursuant to Section 8.01(e), as of the date thereof, sets forth, a true and complete list of all Swap Agreements of the Borrower and each Restricted Subsidiary, the material terms thereof (including the type, term, effective date, termination date and notional amounts or volumes), the net mark to market value thereof, all credit support agreements relating thereto (including any margin required or supplied) and the counterparty to each such agreement. The Borrower is a Qualified ECP Guarantor.

Section 7.22. Use of Loans and Letters of Credit. The proceeds of the Loans and the Letters of Credit shall be used (a) to provide working capital for exploration and production operations, for acquisitions of Oil and Gas Properties permitted hereunder, (b) for general corporate purposes of the Borrower and its Restricted Subsidiaries, (c) to pay fees and expenses incurred in connection with the Transactions, and (d) to repay the obligations under the Existing Credit Agreements. The Borrower and its Subsidiaries are not engaged principally, or as one of its or their important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying margin stock (within the meaning of Regulation T, U or X of the Board). No part of the proceeds of any Loan or Letter of Credit will be used for any purpose which violates the provisions of Regulations T, U or X of the Board.

Section 7.23. Solvency. Immediately after giving effect to each Borrowing and the issuance, increase or extension of each Letter of Credit hereunder (a) the sum of the Debt (including contingent liabilities) of the Borrower and its Restricted Subsidiaries, on a consolidated basis, does not exceed the present fair saleable value of the present assets of the Borrower and its Restricted Subsidiaries, on a consolidated basis, (b) the capital of the Borrower and its Restricted Subsidiaries, on a consolidated basis, is not unreasonably small in relation to their business, and (c) the Borrower and its Restricted Subsidiaries, on a consolidated basis, have not incurred and do not intend to incur, or believe that they will incur, debts including current obligations, beyond their ability to pay such debts as they become due (whether at maturity or otherwise).

Section 7.24. Anti-Corruption Laws and Sanctions. Each of the Credit Parties has implemented and maintains in effect or is subject to policies and procedures reasonably designed to promote and achieve compliance by such Credit Party and its respective directors, officers, employees and agents with applicable Anti-Corruption Laws and applicable Sanctions, and the Credit Parties and their respective officers and employees and, to the Borrower's knowledge, their respective directors and agents, are in compliance with applicable Anti-Corruption Laws and applicable Sanctions. None of (a) the Borrower, its Subsidiaries or any of their respective directors, officers, or employees, or (b) to the Borrower's knowledge, any agent of the Borrower or any Subsidiary of the Borrower that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing or Letter of Credit, use of proceeds or other transaction by the Borrower and its Subsidiaries contemplated by this Agreement will violate any applicable Anti-Corruption Law or applicable Sanctions.

Section 7.25. Affected Financial Institutions. None of the Credit Parties is an Affected Financial Institution.

Section 7.26. No Burdensome Restrictions. None of the Credit Parties is a party to any indenture, loan, or credit agreement or any lease or other agreement or instrument or subject to any charter or corporate restriction or provision of applicable law that could reasonably be expected to have a Material Adverse Effect. None of the Credit Parties is in default under or with respect to, nor has any such Person received any notice of default under, any contract, agreement, lease, or other instrument to which such Person is a party, except to the extent such default would not reasonably be expected to have a Material Adverse Effect.

Section 7.27. Beneficial Ownership. As of the Effective Date, all of the information included in the Beneficial Ownership Certification is true and correct.

Section 7.28. Brokers. No broker's or finder's fees or commission will be payable with respect hereto.

Section 7.29. Employment Agreements; Labor.

(a) As of the Effective Date, none of the Borrower and its Restricted Subsidiaries is a party to an employment agreement.

(b) There are no strikes, stoppages or slowdowns against the Borrower or any Restricted Subsidiary pending or, to the knowledge of the Borrower, threatened that (individually or in the aggregate) could reasonably be expected to result in a Material Adverse Effect. The hours worked by and payments made to employees of the Borrower and the Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act of 1938, as amended, or any other applicable Federal, state, local or foreign law dealing with such matters that (individually or in the aggregate) could reasonably be expected to result in a Material Adverse Effect. All material payments due from the Borrower or any Restricted Subsidiary, or for which any claim may be made against the Borrower or any Restricted Subsidiary, on account of wages and employee health and welfare insurance and other benefits that (individually or in the aggregate) could reasonably be expected to result in a Material Adverse Effect if not paid have been paid or accrued as a liability on the books of the Borrower or such Restricted Subsidiary.

Section 7.30. Material Contracts. As of the Effective Date, Schedule 7.30 sets forth a complete and correct list of all Material Contracts. The Borrower has heretofore delivered to the Administrative Agent a complete and correct copy of all such Material Contracts, including any modifications or supplements thereto, in compliance with Section 8.01(l).

Section 7.31. Outbound Investment Rules. Neither the Borrower nor any of its Subsidiaries is a "covered foreign person", nor has any present intention to become a "covered foreign person", as that term is used in the Outbound Investment Rules. Neither the Borrower nor any of its Subsidiaries currently engages, or has any present intention to engage in the future, directly or indirectly, in (a) a "covered activity" or a "covered transaction," as each such term is defined in the Outbound Investment Rules, (b) any activity or transaction that would constitute a "covered activity" or a "covered transaction," as each such term is defined in the Outbound Investment Rules, if the Borrower were a U.S. Person or (c) any other activity that would cause the Administrative Agent, the Collateral Agent or any Lender to be in violation of the Outbound Investment Rules or cause the Administrative Agent, the Collateral Agent or any Lender to be legally prohibited by the Outbound Investment Rules from performing under this Agreement.

Section 7.32. Intellectual Property. Each Credit Party owns or has obtained valid rights to use all intellectual property, free from any burdensome restrictions, that is necessary for the operation of its business as currently conducted and as proposed to be conducted, except where the failure to obtain any such rights would not reasonably be expected to have a Material Adverse Effect. The operation of the business of the Credit Parties, as currently conducted and as proposed to be conducted, does not infringe, misappropriate, violate or otherwise conflict with the proprietary rights of any third party, except as would not reasonably be expected to have a Material Adverse Effect.

Section 7.33. Accounts. As of the Effective Date, Schedule 7.33 lists all Deposit Accounts, Securities Accounts and Commodity Accounts maintained by or for the benefit of any Credit Party.

ARTICLE VIII.

AFFIRMATIVE COVENANTS

Until the Revolving Commitments have expired or been terminated and 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 paid in full (other than contingent indemnity obligations for which no claims have been made) and all Letters of Credit shall have expired or terminated and all LC Disbursements shall have been reimbursed, 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 the Lenders in accordance with its customary practice):

(a) Annual Financial Statements. Not later than ninety (90) days after the end of each fiscal year of the Borrower, beginning with the financial statements for the fiscal year ending December 31, 2026, the Borrower's audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by independent public accountants of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit, other than any such qualification or exception that is solely with respect to, or resulting solely from, (i) an upcoming maturity date of the Loans or any other Debt permitted hereunder occurring within one year from the time such opinion is delivered or (ii) any prospective inability to satisfy any financial maintenance covenant set forth in Section 9.01 (or any financial maintenance covenant under any other Debt permitted hereunder) on a future date or in a future period) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied.

(b) Quarterly Financial Statements. Not later than forty-five (45) days after the end of each of the first three fiscal quarters and at the Borrower's election, the fourth fiscal quarter, of each fiscal year of the Borrower beginning with the financial statements for the fiscal quarter ending March 31, 2027, its consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes.

(c) Certificate of Financial Officer – Compliance. Concurrently with any delivery of financial statements under Section 8.01(a) or Section 8.01(b), a certificate of a Financial Officer in substantially the form of Exhibit B hereto (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations demonstrating compliance with Section 9.01, and (iii) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 7.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate.

(d) Certificate of Financial Officer – Consolidating Information. If, at any time, all of the Consolidated Subsidiaries of the Borrower are not Consolidated Restricted Subsidiaries, then concurrently with any delivery of financial statements under Section 8.01(a) or Section 8.01(b), a certificate of a Financial Officer setting forth consolidating spreadsheets that show all Consolidated Unrestricted Subsidiaries and the eliminating entries, in such form as would be presentable to the auditors of the Borrower.

(e) Certificate of Financial Officer – Swap Agreements. Concurrently with any delivery of financial statements under Section 8.01(a) and Section 8.01(b), a certificate of a Financial Officer, in form and substance reasonably satisfactory to the Administrative Agent, setting forth as of a recent date, a true and complete list of all Swap Agreements of the Borrower and each Restricted Subsidiary, the material terms thereof (including the type, term, effective date, termination date and notional amounts or volumes), strike price therefor, any new credit support agreements relating thereto not listed on Schedule 7.21, any margin required or supplied under any credit support document, and the counterparty to each such agreement.

(f) Forecasts. On each April 1 and October 1 of each year, commencing April 1, 2027, budgets and forecasts of anticipated cash flow and capital expenditures for the Borrower and its Restricted Subsidiaries for the upcoming twelve-month period in the form customarily prepared by the Borrower.

(g) Certificate of Insurer – Insurance Coverage. Within thirty (30) days of the renewal of any insurance policy, a certificate of insurance coverage from each insurer with respect to the insurance required by Section 8.07, in form reasonably satisfactory to the Administrative Agent, and, if requested by the Administrative Agent, copies of the applicable policies.

(h) Other Accounting Reports. Promptly upon receipt thereof, a copy of each management letter, exception report or other similar letter or report submitted to the Borrower or any of its Subsidiaries by independent accountants (other than customary and standard correspondence) in connection with any annual, interim or special audit made by them of the books of the Borrower or any such Restricted Subsidiary, and a copy of any response by the Borrower or any such Restricted Subsidiary, or the board of directors (or comparable governing body) of the Borrower or any such Restricted Subsidiary, to such management letter, exception report or other similar letter or report.

(i) Notices Under Material Instruments. Promptly after the furnishing thereof, copies of any financial statement, report or notice furnished to or by any Person pursuant to the terms of any preferred stock designation, indenture, loan or credit or other similar agreement evidencing Material Debt, other than this Agreement and not otherwise required to be furnished to the Lenders pursuant to any other provision of this Section 8.01.

(j) Lists of Purchasers. Concurrently with the delivery of any financial statements pursuant to Section 8.01(a) or Section 8.01(b), a list of all Persons purchasing 10% or more of total Hydrocarbons value from the Borrower or any Restricted Subsidiary.

(k) Notice of Sales of Oil and Gas Properties and Termination of Swap Agreements. In the event the Borrower or any Restricted Subsidiary intends to sell, transfer, assign or otherwise dispose of any Borrowing Base Properties or any Equity Interests in any Restricted Subsidiary or terminate or monetize any Swap Agreement in respect of commodities in accordance with Section 9.11(d) that will yield gross proceeds, when aggregated with all other dispositions or terminations or monetizations since the last Scheduled Redetermination, in excess of 5% of the Borrowing Base then in effect, reasonable prior written notice (and in any event not less than five Business Days' prior notice) of such disposition of Borrowing Base Properties or Equity Interests in any Subsidiary or such termination or monetization of Swap Agreements in respect of commodities, the price thereof and the anticipated date of closing and any other details thereof requested by the Administrative Agent or any Lender.

(l) Material Contracts. Promptly and in any event within five (5) Business Days after (i) receipt thereof by the Borrower or any other Credit Party, a copy of any notice, summons, citation, or proceeding seeking to modify in any material respect, revoke, or suspend any Material Contract, or any license, permit or agreement with any Governmental Authority, and (ii) the occurrence of any condition or event of which the Borrower has knowledge, which condition or event has resulted or may reasonably be expected to result in a breach of or noncompliance with any material term, condition, or covenant of any Material Contract to which the Borrower or any other Credit Party is a party or by which they or their Properties may be bound, except, in each case, as could not reasonably be expected to have a Material Adverse Effect. Concurrently with the delivery of financial statements under Section 8.01(a) or Section 8.01(b), a copy of each Material Contract entered into by the Borrower or any other Credit Party during the fiscal quarter (or, in the case of financial statements delivered under Section 8.01(a), the fourth fiscal quarter of the applicable fiscal year) covered by such financial statements.

(m) Information Regarding Borrower and Restricted Subsidiaries. Prompt written notice (and in any event within ten (10) days prior thereto or such later date as the Administrative Agent may agree in its sole discretion) of any change (i) in the Borrower's or any Restricted Subsidiary's organizational name or in any trade name used to identify such Person in the conduct of its business or in the ownership of its Properties, (ii) in the location of the Borrower's or any Restricted Subsidiary's chief executive office or principal place of business, (iii) in the Borrower's or any Restricted Subsidiary's identity or organizational structure or in the jurisdiction in which such Person is incorporated or formed, (iv) in the Borrower's or any Restricted Subsidiary's organizational identification number in such jurisdiction of organization, and (v) in the Borrower's or any Restricted Subsidiary's federal taxpayer identification number.

(n) Production Report and Lease Operating Statements; Hedged Volumes. Concurrently with any delivery of financial statements under Section 8.01(a) and Section 8.01(b), (i) a report setting forth, for the last fiscal quarter of the applicable fiscal year (in the case of the delivery of the financial statements under Section 8.01(a)) or the applicable fiscal quarter (in the case of delivery of the financial statements under Section 8.01(b)), as applicable, the volume of production and sales attributable to production (and the prices at which such sales were made and the revenues derived from such sales) for each such quarter from the Oil and Gas Properties, and setting forth the related ad valorem, severance and production taxes and lease operating expenses attributable thereto and incurred for such quarter, and setting forth the operator of record for the Oil and Gas Properties and (ii) a report setting forth a comparison of (A) the actual volume of production of crude oil and natural gas during such fiscal quarter from the Oil and Gas Properties to (B) the notional volumes of crude oil and natural gas, as applicable, hedged by the Credit Parties under their Swap Agreements for such fiscal quarter.

(o) Notices of Certain Changes. Promptly, but in any event within five (5) Business Days after the execution thereof, copies of any material amendment, modification or supplement to the certificate or articles of incorporation or formation, bylaws, certificate or articles of organization, regulations or limited liability company agreement, any preferred stock designation or any other organizational document of the Borrower or any Restricted Subsidiary.

(p) Free Cash Flow Calculation. Concurrently with (i) the delivery of the financial statements referred to in Section 8.01(a) and (b) above and the related certificate referred to in Section 8.01(c) above, the Borrower shall provide to the Administrative Agent a written statement setting forth a detailed calculation of Free Cash Flow as of the last day of the applicable fiscal quarter for which such quarterly financial statements (or in the case of the annual audited financials, the fourth fiscal quarter) are being provided, in form reasonably acceptable to the Administrative Agent and (ii) any Restricted Payment made by the Borrower pursuant to Section 9.04(f), any Investment made by the Borrower or any Restricted Subsidiary pursuant to Section 9.05(k) or any Redemption pursuant to Section 9.22(c) or (e) (in reliance on Available Free Cash Flow) a detailed calculation of Available Free Cash Flow as of such date (including a detailed calculation of Free Cash Flow as of the last day of the most recently ended fiscal quarter for which financials are available pursuant to Section 8.01(a) or (b), as applicable), certified by a Responsible Officer of the Borrower and in form reasonably acceptable to the Administrative Agent.

(q) Beneficial Ownership. (i) Promptly, following a request by any Lender, all documentation and other information (including, without limitation, a Beneficial Ownership Certification) that such Lender reasonably requests in order to comply with its ongoing obligations under the Beneficial Ownership Regulation, and (ii) prompt written notice of any change in the information provided in any Beneficial Ownership Certification delivered to a Lender that would result in a change to the list of beneficial owners identified in such Beneficial Ownership Certification.

(r) Excess Cash Information. Within two (2) Business Days following the end of each calendar month (or, if a Default, Event of Default or Borrowing Base Deficiency has occurred and is continuing, within two (2) Business Days following the end of each calendar week), and at any other time within five (5) Business Days of a request by the Administrative Agent, the Borrower shall provide to the Administrative Agent a written statement setting forth a summary calculation of Excess Cash in form, reasonably acceptable to the Administrative Agent; provided, however, in the event Borrower's Excess Cash exceeds the Excess Cash Threshold, the Borrower shall also provide to the Administrative Agent detailed summary and balance statements, in a form and detail reasonably acceptable to the Administrative Agent, for each deposit account, securities account, commodity account or other account in which any Excess Cash is held or to which any Excess Cash is credited and amounts excluded therefrom as Excluded Cash.

(s) SEC and Other Filings; Reports to Shareholders. Promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Borrower or any Restricted Subsidiary with the SEC, or with any national securities exchange, or distributed by the Borrower to its equity holders generally, as the case may be.

(t) Incurrence of Permitted Additional Debt. In the event the Borrower or any Restricted Subsidiary intends to incur Permitted Additional Debt, written notice at least five (5) Business Days prior to such intended incurrence, the intended principal amount thereof and the anticipated date of closing, which notice shall include, a copy of the preliminary offering memorandum (if any) and the final offering memorandum (if any) and the Borrower will subsequently (but prior to the effectiveness thereof) furnish the material documents governing the Permitted Additional Debt to the Administrative Agent.

(u) Notice of Casualty Events. Prompt written notice of the occurrence of any Casualty Event with respect to Property having a fair market value in excess of $20,000,000 or the commencement of any condemnation proceeding that could reasonably be expected to result in a Casualty Event with respect to Property having a fair market value in excess of $20,000,000.

(v) Opening of Accounts. Within five (5) Business Days 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 and Collateral Agent of any Deposit Account, Commodities Account or Securities Account (other than an Excluded Account) intended to be opened by the Borrower or any Restricted Subsidiary.

(w) Other Requested Information. Promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary (including, without limitation, any Plan and any reports or other information required to be filed with respect thereto under the Code or under ERISA, but with respect to a Multiemployer Plan, only such information as is reasonably available to Borrower or a Subsidiary), or compliance with the terms of this Agreement or any other Loan Document, as the Administrative Agent, the Collateral Agent or any Lender may reasonably request.

Documents required to be delivered pursuant to Section 8.01(a), Section 8.01(b) or Section 8.01(s) (to the extent any such documents are included in materials otherwise filed with the SEC) shall be deemed to have been delivered on the date on which the Borrower files such documents with the SEC and such documents are publicly available on the SEC's EDGAR system (or any successor system); provided that the Borrower shall deliver the certificate required by Section 8.01(c) to the Administrative Agent in accordance with the terms thereof.

Section 8.02. Notices of Material Events. The Borrower will furnish to the Administrative Agent (for the benefit of each Lender) prompt (and in any event within three (3) Business Days after the Borrower obtains knowledge thereof) written notice of the following:

(a) the occurrence of any Default;

(b) the filing or commencement of, or the threat in writing of, any action, suit, proceeding, investigation or arbitration by or before any arbitrator or Governmental Authority, including in connection with any Environmental Law, against or affecting the Borrower or any Subsidiary not previously disclosed in writing to the Lenders or any material adverse development in any action, suit, proceeding, investigation or arbitration (whether or not previously disclosed to the Lenders) that, in either case, if adversely determined, could reasonably be expected to result in liability in excess of $20,000,000, not fully covered by insurance, subject to normal deductibles; and

(c) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section 8.02 shall be accompanied by a statement of a Responsible Officer setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

Section 8.03. Existence; Conduct of Business. The Borrower will, and will cause each Restricted Subsidiary to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence in a jurisdiction of the United States and the rights, licenses, permits, privileges and franchises material to the conduct of its business and maintain, if necessary, its qualification to do business in each other jurisdiction in which its Oil and Gas Properties are located or the ownership of its Properties requires such qualification, except where the failure to so qualify could not reasonably be expected to have a Material Adverse Effect; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 9.10.

Section 8.04. Payment of Taxes. The Borrower will, and will cause each Restricted Subsidiary to, pay all Tax liabilities of the Borrower and all of its Restricted Subsidiaries (including in its capacity as a withholding agent) before the same shall become delinquent or in default, in each case, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings and the Borrower or such Restricted Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP or (b) the failure to make payment would not reasonably be expected to result in a Material Adverse Effect.

Section 8.05. Performance of Obligations under Loan Documents. The Borrower shall pay the Loans in accordance with the terms hereof, and the Borrower shall, and will cause each Restricted Subsidiary to, do and perform every act and discharge all obligations to be performed and discharged by them under the Loan Documents, including without limitation this Agreement, at the time or times and in the manner specified.

Section 8.06. Operation and Maintenance of Properties. The Borrower, at its own expense, will, and will cause each Restricted Subsidiary to:

(a) except as could not reasonably be expected to have a Material Adverse Effect, operate its Oil and Gas Properties and other Properties or cause such Oil and Gas Properties and other Properties to be operated in a careful and efficient manner in accordance with the practices of the industry and in compliance with all applicable contracts and agreements and in compliance with all Governmental Requirements, including, without limitation, applicable proration requirements and Environmental Laws, and all applicable laws, rules and regulations 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) except as could not reasonably be expected to have a Material Adverse Effect, maintain and keep in good repair, working order and efficiency (ordinary wear and tear excepted) all of its Oil and Gas Properties and other Properties;

(c) promptly pay and discharge, or make reasonable and customary efforts to cause to be paid and discharged, all delay rentals, royalties, expenses and indebtedness accruing under the leases or other agreements affecting or pertaining to its Oil and Gas Properties and will do all other things necessary to keep unimpaired their rights with respect thereto and prevent any forfeiture thereof or default thereunder;

(d) except as could not reasonably be expected to have a Material Adverse Effect, promptly perform or make reasonable and customary efforts to cause to be performed, in accordance with industry standards, the obligations required by each and all of the assignments, deeds, leases, sub-leases, contracts and agreements affecting its interests in its Oil and Gas Properties and other Properties; and

(e) to the extent the Borrower is not the operator of any Property, the Borrower shall use reasonable efforts to cause the operator to comply with this Section 8.06.

Section 8.07. Insurance. The Borrower will, and will cause each Restricted Subsidiary to, maintain, with financially sound and reputable insurance companies (at the time the relevant coverage is placed or renewed), insurance (a) in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations and (b) in accordance with all Governmental Requirements. The loss payable clauses or provisions in said insurance policy or policies insuring any of the Collateral for the Loans shall be endorsed in favor of and made payable to the Collateral Agent as its interests may appear and such policies shall name the Administrative Agent and the Collateral Agent as “additional insureds” and Collateral Agent as lender loss payee and provide that the insurer will endeavor to give at least thirty (30) days prior notice of any cancellation to the Collateral Agent.

Section 8.08. Books and Records; Inspection Rights. The Borrower will, and will cause each Restricted Subsidiary to, keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. The Borrower will, and will cause each Restricted Subsidiary to, permit any representatives designated by the Administrative Agent or Collateral Agent (including at the request of any Lender), upon reasonable prior notice, to visit and inspect its Properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested; provided, that so long as no Event of Default has occurred and is continuing and no Borrowing Base Deficiency exists, the Borrower and its Restricted Subsidiaries shall not be required to reimburse the Administrative Agent and the Collateral Agent for more than one (1) inspection during any fiscal year.

Section 8.09. Compliance with Laws.

(a) The Borrower will, and will cause each 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, could not reasonably be expected to result in a Material Adverse Effect.

(b) The Borrower shall, and shall cause each Restricted Subsidiary to, comply with all material terms, conditions, or covenants of any Material Contract or agreement to which the Borrower or any of its Restricted Subsidiaries is a party or by which they or their Properties may be bound that the non-compliance with which could reasonably be expected to have a Material Adverse Effect.

(c) The Borrower will maintain in effect and enforce policies and procedures reasonably designed to promote and achieve compliance by the Borrower, its Subsidiaries and each of their respective directors, officers, employees and agents with applicable Anti-Corruption Laws and applicable Sanctions.

Section 8.10. Environmental Matters.

(a) Except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect, the Borrower shall: (i) comply, and shall cause its Properties and operations and each Restricted Subsidiary and each Restricted Subsidiary's Properties and operations to comply, with all applicable Environmental Laws; (ii) not Release or threaten to Release, and shall cause each Restricted 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; (iii) timely obtain or file, and shall cause each Restricted Subsidiary to timely obtain or file, all Environmental Permits, if any, required under applicable Environmental Laws to be obtained or filed in connection with its operation or use of the Borrower's or its Subsidiaries' Properties; (iv) promptly commence and diligently prosecute to completion, and shall cause each Restricted Subsidiary to promptly commence and diligently prosecute to completion, any assessment, evaluation, investigation, monitoring, containment, cleanup, removal, repair, restoration, remediation or other remedial obligations to the extent required by Borrower or any Restricted Subsidiary under Environmental Law (collectively, the "Remedial Work") in the event any Remedial Work is required or reasonably necessary under applicable Environmental Laws because of or in connection with the actual or suspected past, present or future Release or threatened Release of any Hazardous Material on, under, about or from any of the Borrower's or its Subsidiaries' Properties; and (v) conduct, and cause its Subsidiaries to conduct, their respective operations and businesses in a manner that will not expose any Property or Person to Hazardous Materials in violation of Environmental Law.

(b) The Borrower will promptly, but in no event later than five days after the Borrower obtains knowledge thereof, notify the Administrative Agent in writing of any threatened (in writing) action, investigation or inquiry by any Governmental Authority or any threatened (in writing) demand or lawsuit by any Person against the Borrower or its Subsidiaries or their Properties in connection with any Environmental Laws if the Borrower could reasonably anticipate that such action will result in liability (whether individually or in the aggregate), if not covered by insurance, which could reasonably be expected to have a Material Adverse Effect.

(c) The Borrower will, upon the reasonable request of the Administrative Agent, provide copies of any material environmental assessments, audits and tests obtained by the Borrower or any Restricted Subsidiary in connection with any future acquisition of Oil and Gas Properties that constitute Borrowing Base Properties to the Administrative Agent.

Section 8.11. Further Assurances.

(a) 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 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 Indebtedness, 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 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, all as may be reasonably necessary or appropriate, in the sole discretion of the Administrative Agent or the Collateral Agent, as applicable, in connection therewith.

(b) The Borrower hereby authorizes the Collateral Agent to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Mortgaged Property and other Collateral without the signature of the Borrower or any other Guarantor where permitted by law. A carbon, photographic or other reproduction of the Security Instruments or any financing statement covering the Mortgaged Property and any other 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) On or before January 16, 2027, on or before May 16, 2027, and thereafter on or before September 1st and March 1st of each year, commencing September 1, 2027, the Borrower shall furnish to the Administrative Agent a Reserve Report evaluating the Oil and Gas Properties of the Credit Parties that are Qualified ECP Guarantors, as of December 31, 2026 (in the case of the Reserve Report due on or about January 16, 2027), March 31, 2027 (in the case of the Reserve Report due on or about May 16, 2027), and thereafter as of the immediately preceding July 1st and January 1st, as applicable. The Reserve Reports as of December 31, 2026 and as of March 31, 2027 shall be prepared, at the Borrower's election, by or under the supervision of the chief engineer or qualified agent of the Borrower who shall certify such Reserve Report to be true and accurate in all material respects and to have been prepared in accordance with the procedures used in the Initial Reserve Report or by one or more Approved Petroleum Engineers. The Reserve Reports as of January 1st of each year shall be prepared by one or more Approved Petroleum Engineers. The Reserve Reports as of July 1st of each year shall be prepared, at the Borrower's election, by or under the supervision of the chief engineer or qualified agent of the Borrower who shall certify such Reserve Report to be true and accurate in all material respects and to have been prepared in accordance with the Society of Petroleum Engineers' Petroleum Resources Management System (SPE-PRMS) or by one or more Approved Petroleum Engineers.

(b) In the event of an Interim Redetermination, the Borrower shall furnish to the Administrative Agent a Reserve Report prepared by or under the supervision of the chief engineer or qualified agent of the Borrower who shall certify such Reserve Report to be true and accurate in all material respects and to have been prepared in accordance with the Society of Petroleum Engineers' Petroleum Resources Management System (SPE-PRMS) or the procedures used in the immediately preceding Reserve Report. 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 reasonably required by the Administrative Agent (which date shall be the last day of a calendar month) as soon as reasonably practicable, but in any event no later than ten (10) Business Days following the receipt of such request.

(c) With the delivery of each Reserve Report, the Borrower shall provide to the Administrative Agent (on behalf of the Lenders) a certificate from a Responsible Officer 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, it being understood that projections concerning volumes and production and cost estimates contained in each Reserve Report are necessarily based upon opinions, estimates and projections and that neither the Borrower nor such Responsible Officer warrants that such opinions, estimates and projections will ultimately prove to have been accurate, (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 Liens permitted by Section 9.03 and Liens securing the Indebtedness, (iii) except as set forth on an exhibit to the certificate, on a net basis there are no imbalances, take or pay or other prepayments, the value of which exceed the dollar threshold 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 Restricted Subsidiary 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 their Oil and Gas 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 of its Oil and Gas Properties sold and in such detail as reasonably required by the Administrative Agent, (v) attached to the certificate is a list of all marketing agreements entered into subsequent to the later of the Effective Date or the most recently delivered Reserve Report which the Borrower could reasonably be expected to have been obligated to list on Schedule 7.19 had such agreement been in effect on the Effective Date, (vi) attached thereto is a schedule of the Oil and Gas Properties evaluated by such Reserve Report that are Mortgaged Properties and demonstrating the percentage of the total present value (using a 10% discount rate) of the Oil and Gas Properties evaluated in such Reserve Report that the value of such Mortgaged Properties represent in compliance with Section 8.14(a) and (vii) except as set forth on such certificate, the minimum volume commitments of the Credit Parties to deliver Hydrocarbons at some future time pursuant to any gathering, processing or transportation agreement do not exceed 5% of the reasonably anticipated projected production from the Credit Party's Oil and Gas Properties constituting Proved Reserves.

Section 8.13. Title Information.

(a) On or before the delivery to the Administrative Agent of each Reserve Report required by Section 8.12(a), the Borrower will deliver title information in form and substance reasonably acceptable to the Administrative Agent covering enough of the Oil and Gas Properties evaluated by such Reserve Report that were not included in the immediately preceding Reserve Report, 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 present value (using a 10% discount rate) of the Oil and Gas Properties evaluated by such Reserve Report.

(b) If the Borrower has provided title information for additional Properties under Section 8.13(a), the Borrower shall, within 60 days after notice from the Administrative Agent that title defects or exceptions exist with respect to such additional Properties, 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 reasonably acceptable Mortgaged Properties with no title defects or exceptions except for Excepted Liens in clauses (a) to (d), (f) and (i) of the definition thereof having an equivalent 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 present value (using a 10% discount rate) of the Oil and Gas Properties evaluated by such Reserve Report.

(c) If the Borrower is unable to cure any title defect requested by the Administrative Agent or the Lenders to be cured within the 60-day period or the Borrower does not comply with the requirements to provide reasonably acceptable title information covering 85% of the present value (using a 10% discount rate) of the Oil and Gas Properties evaluated in the most recent Reserve Report, such default shall not be a Default, but instead the Administrative Agent and/or the Required Lenders shall have the right to exercise the following remedy in their sole discretion from time to time, and any failure to so exercise this remedy at any time shall not be a waiver as to future exercise of the remedy by the Administrative Agent or the Lenders. To the extent that the Administrative Agent or the Required Lenders are not reasonably satisfied with title to any Mortgaged Property after the 60-day period has elapsed, such unacceptable Mortgaged Property shall not count towards the 85% requirement, and 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 to cause the Borrower to be in compliance with the requirement to provide reasonably acceptable title information on 85% of the present value (using a 10% discount rate) of the Oil and Gas Properties. This new Borrowing Base shall become effective immediately after receipt of such notice.

Section 8.14. Collateral and Guaranty Agreements.

(a) In connection with each redetermination of the Borrowing Base, the Borrower shall review the Reserve Report and the list of current Mortgaged Properties (as described in Section 8.12(c)(vi)) to ascertain whether the Mortgaged Properties represent at least 85% of the total present value (using a 10% discount rate) of the Oil and Gas Properties evaluated in the most recently completed Reserve Report after giving effect to exploration and production activities, acquisitions, dispositions and production. In the event that the Mortgaged Properties do not represent at least 85% of such total present value, then the Borrower shall, and shall cause its Restricted Subsidiaries to, grant, within thirty (30) days of delivery of the certificate required under Section 8.12(c) (or such longer period as the Administrative Agent may agree), to the Collateral Agent as security for the Indebtedness a first-priority Lien interest (provided that Excepted Liens of the type described in clauses (a) to (d), (f) and (i) of the definition thereof may exist, but subject to the provisos at the end of such definition) on additional Oil and Gas Properties of the Credit Parties that are Qualified ECP Guarantors and which Oil and Gas Properties are not already subject to a Lien of the Security Instruments such that after giving effect thereto, the Mortgaged Properties will represent at least 85% of such total present value. 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 Collateral Agent and in sufficient executed (and acknowledged where necessary or appropriate) counterparts for recording purposes.

(b) In the event that the Borrower or any other Credit Party creates or acquires any Restricted Subsidiary, the Borrower shall promptly cause such Restricted Subsidiary to execute and deliver the Guaranty Agreement, and the Pledge and Security Agreement (or a supplement to such documents, as applicable) pursuant to which such Restricted Subsidiary shall guaranty the Indebtedness and grant a security interest in such Restricted Subsidiary's Collateral (as defined in the Pledge and Security Agreement). In the event that the Borrower or any other Credit Party creates or acquires any Restricted Subsidiary, the Credit Party that owns the Equity Interests in such new Restricted Subsidiary shall execute and deliver a supplement to the Pledge and Security Agreement, pursuant to which such Credit Party will pledge all of the Equity Interests of such new Restricted Subsidiary to secure the Indebtedness. In connection with the foregoing, the Credit Parties shall deliver original certificates, if any, evidencing the Equity Interests of such new Restricted Subsidiary, together with appropriate undated stock powers for each certificate duly executed in blank by the registered owner thereof and 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, as applicable.

(c) The Borrower will at all times cause the other material tangible and intangible assets of the Borrower and each Restricted Subsidiary (including, without limitation, all Swap Agreements) (but excluding the Excluded Assets) to be subject to a Lien of the Security Instruments.

(d) Notwithstanding any provision in any of the Loan Documents to the contrary, 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 any Credit Party included in the Mortgaged Property and no Building or Manufactured (Mobile) Home shall be encumbered by any Security Instrument; provided, that (i) the applicable Credit Party's interests in all lands and Hydrocarbons situated under any such Building or Manufactured (Mobile) Home shall be included in the Mortgaged Property and shall be encumbered by the Security Instruments and (ii) the Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, permit to exist any Lien on any Building or Manufactured (Mobile) Home except Liens permitted by Section 9.03.

(e) The Borrower shall cause any Person guaranteeing Permitted Additional Debt to contemporaneously become a Guarantor hereunder in accordance with Section 8.14(b).

(f) The Borrower shall cause the management, business and affairs of each of the Borrower and its Restricted 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 its respective 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.

(g) The Borrower shall not, and will not permit any of the Restricted Subsidiaries to, incur, assume, guarantee or be or become liable for any Debt of any of the Unrestricted Subsidiaries, other than non-recourse pledges of Equity Interests in Unrestricted Subsidiaries granted to secure Debt of Unrestricted Subsidiaries.

(h) The Borrower shall not permit any Unrestricted Subsidiary to hold any Equity Interest in, or any Debt of, the Borrower or any Restricted Subsidiary.

(i) The Borrower shall deliver endorsements reasonably acceptable to the Administrative Agent with respect to the insurance coverage required under Section 7.12 no later than thirty (30) days after the Effective Date (or such later date the Administrative Agent may agree in its sole discretion).

Section 8.15. ERISA Compliance. The Borrower will promptly furnish to the Administrative Agent (a) if specifically requested by the Administrative Agent, copies of each annual report (Form 5500 series) with respect to each Plan (other than a Multiemployer Plan), (b) if specifically requested by the Administrative Agent, promptly following such request, copies of (i) any documents described in Section 101(k) of ERISA that Borrower, a Subsidiary or any ERISA Affiliate may request with respect to any Multiemployer Plan and (ii) any notices described in Section 101(l) of ERISA that Borrower, a Subsidiary or any ERISA Affiliate may request with respect to any Multiemployer Plan; provided that if Borrower, a Subsidiary or an ERISA Affiliate has not requested such documents or notices from the administrator or sponsor of the applicable Multiemployer Plan, the Borrower or the applicable Subsidiary or ERISA Affiliate shall promptly make a request for such documents or notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof, and (c) immediately upon becoming aware of the occurrence of any ERISA Event or similar event with respect to a Plan that is reasonably expected to result in material liability to the Borrower or any Credit Party, a written notice signed by the President or the principal Financial Officer of the Borrower, the Restricted Subsidiary or the ERISA Affiliate, as the case may be, specifying the nature thereof, what action the Borrower, the Restricted Subsidiary or the ERISA Affiliate is taking or intends to take with respect thereto, and, when known, any action taken or proposed by the Internal Revenue Service or the Department of Labor.

Section 8.16. Commodity Exchange Act Keepwell Provisions. The Borrower hereby guarantees the payment and performance of all Indebtedness of each Credit Party (other than the Borrower) and absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each Credit Party (other than the Borrower) in order for such Credit Party to honor its obligations under its respective Guaranty Agreement including obligations with respect to Swap Agreements (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, as it relates to such other Credit Parties, 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 Payment in Full. The Borrower intends that this Section 8.16 constitute, and this Section 8.16 shall be deemed to 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. Subordination. The Borrower will cause each Affiliate of any Credit Party that operates, or that has a co-working interest in, any of the Borrower's or such Credit Party's Oil and Gas Properties to subordinate pursuant to agreements in form and substance reasonably satisfactory to the Administrative Agent, any operator or co-working interest owner Liens or other Liens in favor of such Person in respect of such Oil and Gas Properties to the Liens in favor of the Collateral Agent for the benefit of the Secured Parties.

Section 8.18. Payment of other Obligations. The Borrower shall, and shall cause each other Credit Party to, pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its material obligations of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of such Credit Party, as the case may be, or the failure to pay, discharge or otherwise satisfy could not reasonably be expected to have a Material Adverse Effect.

Section 8.19. Deposit Accounts. Except as set forth in Schedule 8.19, the Borrower shall (at its own expense), and shall cause each of the other Credit Parties to, maintain each of their Deposit Accounts with a Lender or an Affiliate of a Lender; provided that if any Lender or Affiliate of a Lender is such a depository bank for the Borrower or any Restricted Subsidiary and such Lender for any reason ceases to be a Lender party to this Agreement, the Borrower or such Restricted Subsidiary (as applicable) shall be deemed to have satisfied the foregoing requirement so long as the Borrower or such Restricted Subsidiary transitions such Deposit Accounts to another Lender or Affiliate of a Lender within sixty (60) days (or such longer period of time as may be acceptable to the Administrative Agent) following such cessation. The Borrower and each Restricted Subsidiary will cause each of their respective Deposit Accounts, Commodities Accounts or Securities Accounts (in each case, other than Excluded Accounts) to at all times be subject to an Account Control Agreement. Notwithstanding the foregoing, the Credit Parties shall not be required to comply with the preceding sentence until the date that is sixty (60) days after the Effective Date (or such later date as the Administrative Agent may agree in its reasonable discretion), by which date the Credit Parties shall have delivered Account Control Agreements with respect to such accounts (in each case, other than Excluded Accounts).

Section 8.20. Required Swap Agreements. The Credit Parties shall enter into and maintain, as of the end of each fiscal quarter, Swap Agreements reasonably satisfactory to the Administrative Agent with respect to the Credit Parties' crude oil and natural gas production with a Secured Swap Provider, which Swap Agreements, taken together, shall (a) prior to the payment in full of the Term Loans and all interest thereon, cover not less than 65% of the reasonably anticipated projected monthly production of crude oil and natural gas, calculated separately, from Proved Developed Producing Reserves included in the most recently delivered Reserve Report for each calendar month during the eighteen (18) full calendar month period immediately following such date of determination, and (b) from and after payment in full of the Term Loans and all interest thereon, cover not less than 50% of the reasonably anticipated projected monthly production of crude oil and natural gas, calculated separately, from Proved Developed Producing Reserves included in the most recently delivered Reserve Report for each calendar month during the eighteen (18) full calendar month period immediately following such date of determination; provided, that no Credit Party shall be required to enter into any Swap Agreement for any month beginning after the scheduled Revolving Maturity Date. For purposes of this Section 8.20, Swap Agreements shall include, without limitation, fixed price swaps, costless collars, purchased put options and purchased floors, and the notional volumes subject to any such collar, put option or floor shall be counted toward the foregoing percentages.

Section 8.21. Use of Proceeds. The Borrower and its Restricted Subsidiaries will use the proceeds of Loans and Letters of Credit (a) to provide working capital for exploration and production operations, (b) for acquisitions of Oil and Gas Properties permitted hereunder, (c) for general corporate purposes of the Borrower and its Restricted Subsidiaries, (d) to pay fees and expenses incurred in connection with the Transactions, and (e) to repay the obligations under the Existing Credit Agreements.

ARTICLE IX.

NEGATIVE COVENANTS

Until the Revolving Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder and all other amounts payable under the Loan Documents have been paid in full (other than contingent indemnity obligations for which no claims have been made) and all Letters of Credit have expired or terminated and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lenders that:

Section 9.01. Financial Covenants.

(a) Consolidated Net Leverage Ratio. The Borrower will not, as of the last day of any fiscal quarter, commencing with the fiscal quarter ending December 31, 2026, permit its Consolidated Net Leverage Ratio to be greater than 3.00 to 1.00.

(b) Current Ratio. The Borrower will not permit, as of the last day of any fiscal quarter, commencing with the fiscal quarter ending December 31, 2026, its ratio of (i) consolidated current assets of the Borrower and its Consolidated Restricted Subsidiaries (including the Unused Availability (but only to the extent that the Borrower is permitted to borrow such amount under the terms of this Agreement, including Section 6.02 hereof), but excluding non-cash assets under ASC 815 and ASC 410 and any Swap Termination Value of any Swap Agreement permitted under Section 9.17(a)(ii)(B)) to (ii) consolidated current liabilities of the Borrower and its Consolidated Restricted Subsidiaries (excluding non-cash obligations under ASC 815 and ASC 410, any Swap Termination Value of any Swap Agreement permitted under Section 9.17(a)(ii)(B), current liabilities under this Agreement, current maturities under this Agreement and other long-term Debt) to be less than 1.0 to 1.0.

Section 9.02. Debt. The Borrower will not, and will not permit any Restricted Subsidiary to, incur, create, assume or suffer to exist any Debt, except:

(a) the Notes or other Indebtedness arising under the Loan Documents or any guaranty of or suretyship arrangement for the Notes or other Indebtedness arising under the Loan Documents;

(b) Debt under Finance Leases and Purchase Money Debt not to exceed at the time of incurrence thereof the greater of (x) $25,000,000 and (y) 3.125% of the Borrowing Base then in effect in the aggregate at any one time outstanding;

(c) Debt associated with bonds, guarantees, letters of credit or surety obligations required by Governmental Requirements or incurred in the ordinary course of business, in each case in connection with the operation of the Oil and Gas Properties and not in connection with money borrowed, or Debt associated with guarantees or surety obligations delivered by the Borrower to any provider of such bonds;

(d) intercompany Debt between the Borrower and any Restricted Subsidiary or between Restricted Subsidiaries to the extent permitted by Section 9.05(f); provided that such Debt is not held, assigned, transferred, negotiated or pledged to any Person other than the Borrower or one of its Restricted Subsidiaries, and, provided further, that any such Debt owed by either the Borrower or a Restricted Subsidiary shall be subordinated to the Indebtedness on terms set forth in the Guaranty Agreement;

(e) endorsements of negotiable instruments for collection in the ordinary course of business;

(f) Debt constituting a guarantee by any Credit Party of any Debt incurred by another Credit Party so long as the incurrence of such Debt by such other Credit Party is otherwise permitted by this Section 9.02;

(g) Debt arising under Swap Agreements permitted by Section 9.17;

(h) Permitted Additional Debt and Permitted Refinancing Debt;

(i) other Debt not otherwise permitted pursuant to this Section 9.02 not to exceed at the time of incurrence thereof the greater of (x) $25,000,000 and (y) 3.125% of the Borrowing Base then in effect at any one time outstanding; and

(j) Debt in respect of Finance Leases (if applicable) or other obligations, in each case, arising under sale and leaseback transactions permitted under Section 9.12.

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 payment of any Indebtedness;

(b) Excepted Liens;

(c) Liens securing Finance Leases or Purchase Money Debt permitted by Section 9.02(b) but only on the Property under lease or the Property purchased with such Purchase Money Debt, as applicable;

(d) Liens on Property not otherwise permitted by the foregoing clauses of this Section 9.03; provided that the aggregate principal or face amount of all Debt secured under this Section 9.03(d) shall not exceed $10,000,000 at any time; and

(e) Liens on Property subject to any sale and leaseback transaction permitted under Section 9.12.

Notwithstanding the foregoing, none of the Liens permitted pursuant to this Section 9.03 (other than Excepted Liens and Liens securing the Indebtedness) may at any time attach to any Borrowing Base Properties.

Section 9.04. Dividends and Distributions. The Borrower will not, and will not permit any of its Restricted Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, return any capital to its Equity Interest holders, or make any distribution of its Property to its Equity Interest holders, except that:

(a) the Borrower may declare and pay distributions and dividends with respect to its Equity Interests payable solely in additional shares of its Equity Interests (other than Disqualified Capital Stock);

(b) Restricted Subsidiaries may declare and pay distributions and dividends ratably with respect to their Equity Interests;

(c) the Borrower may convert the Effective Date Preferred Equity into common stock of the Borrower in accordance with the Certificate of Designation and may make customary payments in cash in lieu of fractional shares in connection therewith;

(d) the Borrower may make Restricted Payments to the holders of the Effective Date Preferred Equity in an aggregate amount not to exceed $7,000,000 per fiscal quarter as of the last Business Day of each of the first two fiscal quarters ending after the Effective Date so long as, after giving effect to such Restricted Payment, (i) Unused Availability is not less than 10% of the Revolving Loan Limit then in effect, (ii) the Consolidated Net Leverage Ratio, on a pro forma basis (including any incurrence of Debt in connection with such Restricted Payment), for the Rolling Period most recently ended for which financial statements have been delivered pursuant to Section 8.01(a) or Section 8.01(b), as applicable, is equal to or less than 2.00 to 1.00, and (iii) no Default, Event of Default or Borrowing Base Deficiency is continuing or would result therefrom;

(e) following Payment in Full of the Term Loan and all amounts owing in connection therewith, the Borrower may make Restricted Payments to the holders of its Equity Interests so long as, after giving effect to such Restricted Payment, (i) Unused Availability is not less than 25% of the Revolving Loan Limit then in effect, (ii) the Consolidated Net Leverage Ratio, on a pro forma basis (including any incurrence of Debt in connection with such Restricted Payment), for the Rolling Period most recently ended for which financial statements have been delivered pursuant to Section 8.01(a) or Section 8.01(b), as applicable, is equal to or less than 1.50 to 1.00, and (iii) no Default, Event of Default or Borrowing Base Deficiency is continuing or would result therefrom;

(f) following Payment in Full of the Term Loan and all amounts owing in connection therewith, the Borrower may make Restricted Payments to the holders of its Equity Interests so long as, after giving effect to such Restricted Payment, (i) Unused Availability is not less than 20% of the Revolving Loan Limit then in effect, (ii) the Consolidated Net Leverage Ratio, on a pro forma basis (including any incurrence of Debt in connection with such Restricted Payment), for the Rolling Period most recently ended for which financial statements have been delivered pursuant to Section 8.01(a) or Section 8.01(b), as applicable, is equal to or less than 2.00 to 1.00, (iii) such Restricted Payment shall not exceed an amount equal to Available Free Cash Flow as of such date, and (iv) no Default, Event of Default or Borrowing Base Deficiency is continuing or would result therefrom;

(g) the Borrower may repurchase, redeem or otherwise acquire or retire for value its Equity Interests (or options, warrants or other rights in respect thereof) held by any current or former officer, director, employee or consultant of the Borrower or any of its Restricted Subsidiaries (or their respective estates, heirs, family members, spouses, former spouses or permitted transferees) pursuant to any employment agreement, equity incentive plan, stock option plan or other benefit plan or arrangement, in an aggregate amount not to exceed $5,000,000 in any fiscal year, so long as no Default, Event of Default or Borrowing Base Deficiency is continuing or would result therefrom;

(h) the Borrower may (i) make deemed repurchases of its Equity Interests upon the cashless or net exercise of stock options, warrants or other rights to acquire Equity Interests and (ii) withhold, or repurchase from the holders thereof, Equity Interests in connection with the exercise, vesting or settlement of stock options, restricted stock, restricted stock units or other equity-based awards in order to satisfy the exercise price thereof or any Taxes (including withholding Taxes) payable in connection therewith;

(i) the Borrower may make cash payments in lieu of the issuance of fractional shares in connection with any dividend, split, reverse split, combination or reclassification of its Equity Interests or the exercise, conversion or exchange of any warrants, options or other securities convertible into or exchangeable for its Equity Interests; and

(j) the Borrower may redeem, repurchase, retire or otherwise acquire the Effective Date Preferred Equity (or any other Equity Interests of the Borrower) in exchange for, or with the net cash proceeds of a substantially concurrent issuance of, Equity Interests of the Borrower (other than Disqualified Capital Stock).

Section 9.05. Investments, Loans and Advances. The Borrower will not, and will not permit any Restricted Subsidiary to, make or permit to remain outstanding any Investments in or to any Person, except that the foregoing restriction shall not apply to:

(a) accounts receivable arising in the ordinary course of business;

(b) direct obligations of the United States or any agency thereof, or obligations guaranteed by the United States or any agency thereof, in each case maturing within one year from the date of creation thereof;

(c) commercial paper maturing within one year from the date of creation thereof rated in the highest grade by S&P or Moody's;

(d) deposits maturing within one year from the date of creation thereof with, including certificates of deposit issued by, any Lender or any office located in the United States of any other bank or trust company which is organized under the laws of the United States or any state thereof, has capital, surplus and undivided profits aggregating at least $100,000,000 (as of the date of such bank or trust company's most recent financial reports) and has a short term deposit rating of no lower than A2 or P2, as such rating is set forth from time to time, by S&P or Moody's, respectively;

(e) deposits in money market or other mutual funds investing exclusively in Investments described in Section 9.05(b), Section 9.05(c) or Section 9.05(d);

(f) Investments (i) made by the Borrower in or to the Restricted Subsidiaries (including any new Restricted Subsidiary that becomes a Guarantor in compliance herewith substantially contemporaneously with such Investment being made), and (ii) made by any Restricted Subsidiary in or to the Borrower or any other Restricted Subsidiary;

(g) subject to the limits in Section 9.06, Investments in direct ownership interests in additional Oil and Gas Properties and gas gathering systems, midstream, gathering, processing, compression, transportation, storage, water (including produced water sourcing, handling, gathering, recycling and disposal), electric power generation, transmission and distribution, and other infrastructure assets related thereto or related to farm-out, farm-in, participation agreements, joint operating, joint venture or area of mutual interest agreements, gathering systems, pipelines 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;

(h) (i) guarantees of Debt of the Borrower and the Restricted Subsidiaries permitted by Section 9.02 and (ii) guarantees by the Borrower or any Restricted Subsidiary for the performance or payment obligations of the Borrower or any Restricted Subsidiary, which obligations were incurred in the ordinary course of business and do not constitute Debt;

(i) Investments pursuant to Swap Agreements otherwise permitted under this Agreement;

(j) following Payment in Full of the Term Loan and all amounts owing in connection therewith, other Investments not otherwise permitted pursuant to this Section 9.05 so long as, after giving effect to such Investment, (i) Unused Availability is not less than 25% of the Revolving Loan Limit then in effect, (ii) the Consolidated Net Leverage Ratio, on a pro forma basis (including any incurrence of Debt in connection with such Investment), for the Rolling Period most recently ended for which financial statements have been delivered pursuant to Section 8.01(a) or Section 8.01(b), as applicable, is equal to or less than 1.50 to 1.00, and (iii) no Default, Event of Default or Borrowing Base Deficiency is continuing or would result therefrom;

(k) following Payment in Full of the Term Loan and all amounts owing in connection therewith, other Investments not otherwise permitted pursuant to this Section 9.05 so long as, after giving effect to such Investment, (i) Unused Availability is not less than 20% of the Revolving Loan Limit then in effect, (ii) the Consolidated Net Leverage Ratio, on a pro forma basis (including any incurrence of Debt in connection with such Investment), for the Rolling Period most recently ended for which financial statements have been delivered pursuant to Section 8.01(a) or Section 8.01(b), as applicable, is equal to or less than 2.00 to 1.00, (iii) such Investment shall not exceed an amount equal to Available Free Cash Flow as of such date, and (iv) no Default, Event of Default or Borrowing Base Deficiency is continuing or would result therefrom; and

(l) other Investments not otherwise permitted pursuant to this Section 9.05 in an aggregate amount at any one time outstanding not to exceed at the time of making such Investment (i) prior to Payment in Full of the Term Loan and all amounts owing in connection therewith, the greater of (A) $25,000,000 and (B) 3.125% of the Borrowing Base then in effect and (ii) from and after Payment in Full of the Term Loan and all amounts owing in connection therewith, the greater of (A) $50,000,000 and (B) 6.25% of the Borrowing Base then in effect, in each case, determined at the time such Investment is made.

Section 9.06. Nature of Business; No International Operations. The Borrower will not, and will not permit any Restricted Subsidiary to, allow any material change to be made in the character of its business as an independent oil and gas exploration and production company (it being understood that the ownership and operation of midstream, gathering, processing, transportation, water and electric power generation, transmission and distribution assets and other infrastructure assets and businesses that are related, ancillary or complementary to, or that support, the oil and gas operations of the Borrower and its Restricted Subsidiaries shall not constitute a change in the character of such business). From and after the Effective Date, the Borrower and its Restricted Subsidiaries will not acquire or make any other expenditure (whether such expenditure is capital, operating or otherwise) in or related to, any Oil and Gas Properties not located within the geographical boundaries of the United States except for Investments permitted under Section 9.05(j), Section 9.05(k) and Section 9.05(l) above. The Borrower and the Restricted Subsidiaries shall at all times remain organized under the laws of the United States of America or any State thereof or the District of Columbia.

Section 9.07. Proceeds of Loans. The Borrower will not permit the proceeds of the Loans to be used for any purpose other than those permitted by Section 7.22. Neither the Borrower nor any Person acting on behalf of the Borrower has taken or will take any action which might cause any of the Loan Documents to violate Regulations T, U or X or any other regulation of the Board or to violate Section 7 of the Securities Exchange Act of 1934 or any rule or regulation thereunder, in each case as now in effect or as the same may hereinafter be in effect. If requested by the Administrative Agent, the Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form U-1 or such other form referred to in Regulation U, Regulation T or Regulation X of the Board, as the case may be.

Section 9.08. ERISA Compliance. The Borrower will not, and will not permit any Restricted Subsidiary to, at any time:

(a) engage in, or permit any ERISA Affiliate to engage in, any transaction in connection with which the Borrower, a Restricted Subsidiary or any ERISA Affiliate could reasonably be expected to be subjected to either a civil penalty assessed pursuant to subsections (c), (i), (l) or (m) of section 502 of ERISA or a tax imposed by Chapter 43 of Subtitle D of the Code with respect to a Plan that, in either case, could reasonably be expected to result in a Material Adverse Effect;

(b) fail to make, or permit any ERISA Affiliate to fail to make, full payment when due of all amounts which, under the provisions of any Plan, agreement relating thereto or applicable law, the Borrower, a Restricted Subsidiary or any ERISA Affiliate is required to pay as contributions thereto, if a Material Adverse Effect would result; or

(c) except as would not reasonably be expected to result in a Material Adverse Effect, 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, including any such plan that provides benefits to former employees of such entities other than as required by applicable law, that may not be terminated by such entities in their sole discretion at any time without any material liability to the Borrower or any Restricted Subsidiary, or except as would not reasonably be expected to result in a Material Adverse Effect, any employee pension benefit plan, as defined in section 3(2) of ERISA, that is subject to Title IV of ERISA, section 302 of ERISA or section 412 of the Code.

Section 9.09. Sale or Discount of Receivables. Except for the sale of defaulted accounts arising in the ordinary course of business in connection with the compromise or collection thereof and not in connection with any financing transaction, the Borrower will not, and will not permit any Restricted Subsidiary to, discount or sell (with or without recourse) any of its notes receivable or accounts receivable.

Section 9.10. Mergers, Etc. The Borrower will not, and will not permit any Restricted Subsidiary to, merge into or with or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its Property to any other Person (whether now owned or hereafter acquired) (any such transaction, a "consolidation"), or liquidate or dissolve, including, in each case, pursuant to a division described in Section 1.06; provided that (a) any Restricted Subsidiary may participate in a consolidation with the Borrower or any other Restricted Subsidiary (provided that the Borrower shall be the continuing or surviving entity in any such transaction involving the Borrower), and (b) any Restricted Subsidiary may liquidate or dissolve so long as its assets (if any) are transferred to the Borrower or another Restricted Subsidiary prior to such liquidation or dissolution in accordance with Section 9.11(h).

Section 9.11. Sale of Properties and Termination of Swap Agreements. The Borrower will not, and will not permit any Restricted Subsidiary to, sell, assign, farm-out, convey or otherwise transfer any Property (including, in each case, pursuant to a division described in Section 1.06) or to terminate or otherwise monetize any Swap Agreement in respect of commodities except for:

(a) the sale of Hydrocarbons in the ordinary course of business;

(b) farmouts of undeveloped acreage and assignments in connection with such farmouts on property that does not include Proved Reserves;

(c) the sale or transfer of equipment that is no longer necessary for the business of the Borrower or such Restricted Subsidiary or is replaced by equipment of at least comparable value and use;

(d) subject to Section 9.17, the sale or other disposition of any Oil and Gas Property or any interest therein or of any Restricted Subsidiary owning Oil and Gas Properties and the termination or monetization of any Swap Agreement in respect of commodities; provided that,

(i) no Default, Event of Default or Borrowing Base Deficiency exists or results from such sale or disposition of Property or the termination or monetization of any Swap Agreement in respect of commodities;

(ii) (x) 100% of the consideration received in respect of any such termination or monetization shall be cash and (y) with respect to Dispositions, 100% of the consideration received in respect of any such sale or other disposition shall be cash or other Oil and Gas Properties; provided that (1) not less than eighty percent (80%) of the consideration received in respect of such sale or other disposition shall be cash, and (2) if less than 100% of the consideration received in respect of such sale or other disposition shall be cash, such remaining consideration shall be Oil and Gas Properties with a reserve categorization equivalent to or better than the Oil and Gas Properties being disposed of and shall be located in the Midland basin; provided, further that, collectively, the Borrower and/or any Restricted Subsidiary may conduct Dispositions for which the greater of the sale price or the Borrowing Base Value of such assets does not exceed $20,000,000 in the aggregate over the term of this Agreement without meeting the requirements in this clause (y).

(iii) the consideration received in respect of such sale or other disposition or termination or monetization of any Swap Agreement in respect of commodities shall be equal to or greater than the fair market value of the Oil and Gas Property, interest therein or Restricted Subsidiary subject of such sale or other disposition, or Swap Agreement subject of such termination or monetization (as reasonably determined by a Responsible Officer of the Borrower and, if requested by the Administrative Agent, such Responsible Officer of the Borrower shall deliver a certificate certifying to that effect);

(iv) if the aggregate value (which, for purposes hereof, shall mean the value the Administrative Agent attributes to such Oil and Gas Property or Swap Agreement for purposes of the most recent determination of the Borrowing Base) of Oil and Gas Properties sold or disposed of and Swap Agreements terminated or otherwise monetized pursuant to this clause (d) in any period between two successive Scheduled Redetermination Dates exceeds 5% of the Borrowing Base then in effect, the Borrowing Base shall be subject to reduction pursuant to Section 2.07(e); and

(v) if any such sale or other disposition is of a Restricted Subsidiary owning Oil and Gas Properties, such sale or other disposition shall include all the Equity Interests of such Restricted Subsidiary;

(e) licenses of intellectual property, none of which, in the aggregate, materially impair the operation of the business of the Borrower or any Restricted Subsidiary;

(f) the abandonment of intellectual property that is no longer material to the operation of the business of the Borrower or any Restricted Subsidiary;

(g) other dispositions and sales of Properties (other than Oil and Gas Properties) not otherwise permitted pursuant to this Section 9.11 having a fair market value not to exceed $15,000,000 in the aggregate for all dispositions and sales of Properties pursuant to this Section 9.11(g) during any fiscal year;

(h) assets of any Credit Party to another Credit Party provided that (i) with respect to any transfers of Equity Interests in any Subsidiaries of the Borrower, the requirements of Section 8.14(b) are satisfied and (ii) with respect to any transfers of Proved Oil and Gas Properties, the transferee promptly delivers mortgages or other Security Instruments in favor of the Administrative Agent to the extent necessary to satisfy the requirements of Section 8.14(a); and

(i) the sale, exchange, trade, swap or other disposition of Oil and Gas Properties (or interests therein) to which no Borrowing Base Value is attributed in the most recent determination of the Borrowing Base (including acreage trades and swaps of undeveloped acreage) in exchange for assets of the same type in the ordinary course of business of comparable or greater value or usefulness to the business of the Borrower or its Restricted Subsidiaries.

Section 9.12. Sale-and-Leaseback. The Borrower shall not, nor shall it permit any of the other Credit Parties to, sell or transfer to a Person any Property, whether now owned or hereafter acquired, if at the time or thereafter the Borrower or such other Credit Party shall lease as lessee such Property or any part thereof or other Property which such Person intends to use for substantially the same purpose as the Property sold or transferred; provided, that the foregoing shall not prohibit (a) any such sale and leaseback transaction existing on the Effective Date or (b) any such sale and leaseback transaction in respect of all or any portion of the electric power generation, transmission or distribution system (including the priority power system and related equipment, facilities and infrastructure) of the Borrower or any other Credit Party, so long as the aggregate fair market value of all Property subject to sale and leaseback transactions entered into pursuant to this clause (b) does not exceed $20,000,000 at any time.

Section 9.13. Environmental Matters. Except as could not reasonably be expected to have a Material Adverse Effect, the Borrower will not, and will not permit any Restricted Subsidiary to, cause or permit any of its Property to be in violation of Environmental Laws, or permit a Release or threatened Release of Hazardous Materials or exposure to any Hazardous Materials in violation of Environmental Law; provided that the foregoing shall not apply to any Remedial Work that is being conducted in accordance with applicable Environmental Laws.

Section 9.14. Transactions with Affiliates. The Borrower will not, and will not permit any Restricted Subsidiary to, enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property or the rendering of any service, with any Affiliate unless such transactions are not prohibited under this Agreement and are upon fair and reasonable terms no less favorable to it than it would obtain in a comparable arm's length transaction with a Person not an Affiliate, other than (a) transactions by and among the Borrower and the Restricted Subsidiaries, (b) any Restricted Payment permitted by Section 9.04, (c) Investments permitted under Section 9.05(j), Section 9.05(k) and Section 9.05(l), (d) fees and compensation to, and indemnity provided on behalf of, officers, directors, and employees of the Borrower or any Restricted Subsidiary in their capacity as such, to the extent such fees and compensation are customary, and (e) issuances of Equity Interests of the Borrower to the extent otherwise permitted by this Agreement.

Section 9.15. Negative Pledge Agreements; Dividend Restrictions. The Borrower will not, and will not permit any Restricted Subsidiary to, create, incur, assume or suffer to exist any contract, agreement or understanding (other than (a) this Agreement and the Security Instruments, (b) agreements or arrangements evidencing or related to secured Debt permitted by this Agreement to the extent such restriction applies only to the property securing such Debt; (c) customary restrictions and conditions with respect to the sale or disposition of Property or Equity Interests permitted under Section 9.11 pending the consummation of such sale or disposition; (d) customary provisions in joint operating agreements, joint venture agreements, partnership agreements, limited liability company agreements, unitization and pooling agreements, farm-out agreements and other similar agreements entered into in the ordinary course of business; and (e) customary provisions in leases, licenses, easements and other contracts restricting the assignment, subletting or encumbrance thereof or of the Property subject thereto) which in any way prohibits or restricts the granting, conveying, creation or imposition of any Lien on any of its Property in favor of the Collateral Agent and the Secured Parties or restricts any Restricted Subsidiary from paying dividends or making distributions to the Borrower or any Guarantor, or which requires the consent of or notice to other Persons in connection therewith.

Section 9.16. Imbalances, Take-or-Pay or Other Prepayments. The Borrower will not, and will not permit any Restricted Subsidiary to, allow imbalances, take-or-pay or other prepayments with respect to Hydrocarbons produced from the Oil and Gas Properties of the Borrower or any Restricted Subsidiary that would require the Borrower or such Restricted Subsidiary to deliver Hydrocarbons produced from the Oil and Gas Properties at some future time without then or thereafter receiving full payment therefor other than imbalances, take-or-pay or other prepayments incurred in the ordinary course of business and which imbalances, take-or-pay, or other prepayments and balancing rights, in the aggregate, do not exceed 2.0% of the aggregate annual production of gas from the Oil and Gas Properties of the Borrower and its Restricted Subsidiaries during the most recent calendar year (on an mcf equivalent basis).

Section 9.17. 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) subject to clause (b) of this Section 9.17, Swap Agreements with a Secured Swap Provider in respect of commodities entered into not for speculative purposes the notional volumes for which (when aggregated with other commodity Swap Agreements then in effect other than basis differential and roll swaps on volumes already hedged pursuant to other Swap Agreements) do not exceed, as of the date such Swap Agreement is entered into, for the 60-month period (and for each fiscal month during such period) from the date such Swap Agreement trade or transaction is created, 85% of the reasonably anticipated projected production from the Credit Parties' Oil and Gas Properties constituting Proved Developed Producing Reserves (as set forth in the most recent Reserve Report delivered pursuant to the terms of this Agreement) of crude oil and natural gas, calculated separately; provided, however, that such Swap Agreements shall not, in any case, have a tenor of greater than sixty (60) consecutive calendar months, beginning with the first full calendar month following the date in question. It is understood that Swap Agreements in respect of commodities which may, from time to time, "hedge" the same volumes, but different elements of commodity risk thereof, shall not be aggregated together when calculating the notional volumes in respect of the foregoing limitations; and

(ii) Swap Agreements in respect of interest rates with a Secured Swap Provider, as follows:

(A) Swap Agreements effectively converting interest rates from fixed to floating, the notional amounts of which (when aggregated with all other Swap Agreements of the Borrower and its Restricted Subsidiaries then in effect effectively converting interest rates from fixed to floating) do not exceed 75% of the anticipated outstanding principal amount of the Credit Parties' Debt for borrowed money which bears interest at a fixed rate, and which Swap Agreements shall not, in any case, have a tenor beyond the maturity date of such Debt; and

(B) Swap Agreements effectively converting interest rates from floating to fixed, the notional amounts of which do not exceed 75% of the anticipated outstanding principal amount of the Credit Parties' Debt for borrowed money which bears interest at a floating rate, and which Swap Agreements permitted under this clause (B) shall not, in any case, have a tenor beyond the maturity date of such Debt.

(b) The Borrower will not, and will not permit any Restricted Subsidiary to, allow the aggregate weighted average of the notional volumes of all Swap Agreements in respect of commodities for any fiscal quarter (other than basis differential and roll swaps on volumes already hedged pursuant to other Swap Agreements) to exceed 100% of actual production from Proved Developed Producing Reserves of crude oil and natural gas, as applicable, for such fiscal quarter; provided, that, if the foregoing limit is exceeded, it shall not constitute a violation of this Section 9.17(b) if the Borrower shall, no later than thirty (30) days after the end of such fiscal quarter, terminate, create offsetting positions or otherwise unwind existing Swap Agreements such that, at such time, future hedging volumes will comply with the requirements of clause (a) above.

(c) In no event shall any Swap Agreement contain any requirement, agreement or covenant for the Borrower or any Restricted Subsidiary to post collateral, credit support (including in the form of letters of credit) or margin to secure their obligations under such Swap Agreement or to cover market exposures except for Collateral granted to Secured Swap Providers pursuant to the Security Instruments.

(d) For purposes of entering into or maintaining Swap Agreement trades or transactions under Section 9.17(a), forecasts of reasonably anticipated production from the Borrower's and its Restricted Subsidiaries' Oil and Gas Properties constituting Proved Reserves as set forth on the most recent Reserve Report delivered pursuant to the terms of this Agreement shall be revised to account for any increase or decrease therein anticipated because of information obtained by the Borrower or any of its Restricted Subsidiaries and delivered to the Administrative Agent subsequent to the publication of such Reserve Report including the Borrower's or any of its Restricted Subsidiaries' internal forecasts of production decline rates for existing wells and additions to or deletions from anticipated future production from new wells and completed acquisitions coming on stream or failing to come on stream.

Section 9.18. Amendments to Organizational Documents; Material Contracts; Permitted Additional Debt; Preferred Equity Documents.

The Borrower shall not, nor shall it permit any of the other Credit Parties to:

(a) amend, supplement, modify or restate (or permit to be amended, supplemented, modified or restated) their articles or certificate of incorporation, bylaws, limited partnership agreements, limited liability company agreements, or other equivalent organizational documents in any manner that is materially adverse to the interests of the Lenders or amend its name or change its jurisdiction of incorporation, organization or formation, in any case, without at least ten (10) days' prior written notice to the Administrative Agent; provided that amendments, supplements, modifications or restatements to or of such items related to the terms of the Effective Date Preferred Equity shall be governed by clause (d) of this Section 9.18; or

(b) amend, supplement, modify or restate (or permit to be amended, supplemented, modified or restated) any Material Contract to which it is a party in any manner that could reasonably be expected to be materially adverse to the interests of the Lenders (as determined by the Borrower in good faith) or which could reasonably be expected to result in a Material Adverse Effect;

(c) amend, modify, waive or otherwise change, consent or agree to any amendment, modification, waiver or other change to, any of the terms of the Permitted Additional Debt if (i) the effect thereof would be to shorten the maturity of the Permitted Additional Debt to a date that is earlier than 180 days after the Revolving Maturity Date, or (ii) such action adds or amends any representations and warranties, covenants or events of default to be materially more restrictive or burdensome than this Agreement without this Agreement being contemporaneously amended to add similar provisions; provided that the foregoing shall not prohibit the execution of supplemental agreements to add guarantors if required by the terms thereof (provided that any such guarantor also guarantees the Indebtedness pursuant to the Guaranty Agreement and each of Borrower and such guarantor otherwise complies with Section 8.14); or

(d) amend, supplement, modify or restate any of the Effective Date Preferred Equity Documents other than amendments, supplements, modifications or restatements that (i) do not increase the cash distribution coupon rates of any of the Effective Date Preferred Equity in excess of the applicable rate provided for in the Certificate of Designation as in effect on Effective Date or further restrict the ability of the Borrower to pay any such distribution in kind, (ii) do not add mandatory Redemption or other similar payment features or provisions granting the holders of the Effective Date Preferred Equity the right to require the Borrower to Redeem, repurchase, purchase, or establish a sinking fund in respect of the Effective Date Preferred Equity other than a mandatory Redemption right that exists under the Certificate of Designation as in effect on Effective Date, or (iii) are not otherwise materially adverse to the Lenders (it being understood any increase in the amount of the Effective Date Preferred Equity shall not be deemed materially adverse to the Lenders).

Section 9.19. Limitation on Accounting Changes or Changes in Fiscal Periods. The Borrower shall not make (a) any change in any of its accounting policies affecting the presentation of financial statements or reporting practices, except as required or permitted by GAAP, or (b) any change to the end of its fiscal year to end on a day other than December 31 or change any method of determining fiscal quarters.

Section 9.20. Subsidiaries.

(a) The Borrower will not, and will not permit any Restricted Subsidiary to, create or acquire any additional Subsidiary unless the Borrower gives written notice to the Administrative Agent of such creation or acquisition and, in the case of the creation or acquisition of a Restricted Subsidiary, complies with Section 8.14(b). The Borrower shall not, and shall not permit any Restricted Subsidiary to, sell, assign or otherwise dispose of any Equity Interests in any Restricted Subsidiary except in compliance with Section 9.10 and Section 9.11. Neither the Borrower nor any Restricted Subsidiary shall have any Foreign Subsidiaries that are Restricted Subsidiaries. The Borrower will not permit any Person other than the Borrower or any other Restricted Subsidiary to own any Equity Interests in any Restricted Subsidiary.

(b) Unless designated as an Unrestricted Subsidiary on Schedule 7.13 as of the Effective Date or thereafter, pursuant to Section 9.20(c), any Person that becomes a Subsidiary of the Borrower or any of its Restricted Subsidiaries shall be classified as a Restricted Subsidiary.

(c) The Borrower may designate any Restricted Subsidiary, including a newly formed or newly acquired Subsidiary, as an Unrestricted Subsidiary by written notification thereof to the Administrative Agent if (i) immediately prior, and immediately after giving effect, to such designation, no Event of Default nor any Borrowing Base Deficiency shall have occurred and be continuing, and (ii) such designation is deemed to be an Investment in an Unrestricted Subsidiary in an amount equal to the fair market value as of the date of such designation of the Borrower's direct and indirect ownership interest in such Subsidiary, and such Investment would be permitted to be made at the time of such designation under Section 9.05(j) or Section 9.05(k) or, from and after Payment in Full of the Term Loan and all amounts owing in connection therewith, Section 9.05(l). Except as provided in this Section 9.20(c), no Restricted Subsidiary may be redesignated as an Unrestricted Subsidiary.

(d) 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 its Restricted Subsidiaries contained in each of the Loan Documents are true and correct on and as of such date as if made on and as of the date of such redesignation (or, if stated to have been made expressly as of an earlier date, were true and correct as of such date), (ii) no Event of Default would exist, and (iii) the Borrower complies with the requirements of Section 8.14 and Section 9.20.

Section 9.21. Marketing Activities. The Borrower will not, and will not permit any of its Restricted Subsidiaries to, engage in marketing activities for any Hydrocarbons or enter into any contracts related thereto other than (a) contracts for the sale of Hydrocarbons scheduled or reasonably estimated to be produced from their Oil and Gas Properties constituting Proved Reserves during the period of such contract, (b) contracts for the sale of Hydrocarbons scheduled or reasonably estimated to be produced from Oil and Gas Properties constituting Proved Reserves of third parties during the period of such contract associated with the Oil and Gas Properties of the Borrower and its Restricted Subsidiaries that the Borrower or one of its Restricted Subsidiaries has the right or obligation to market pursuant to joint operating agreements, unitization agreements or other similar contracts (or contracts executed in connection therewith) that are usual and customary in the oil and gas business, and (c) other contracts for the purchase and/or sale of Hydrocarbons of third parties (i) which have generally offsetting provisions (i.e., corresponding pricing mechanics, delivery dates and points and volumes) such that no "position" is taken and (ii) for which appropriate credit support has been taken to alleviate the material credit risks of the counterparty thereto.

Section 9.22. Prepayments, Redemptions and Purchases of Preferred Equity and Permitted Additional Debt. The Borrower will not, and will not permit any of its Restricted Subsidiaries to, prior to the date that is 91 days after the Revolving Maturity Date, make or offer to make any optional or voluntary Redemption of or otherwise optionally or voluntarily Redeem (whether in whole or in part) any principal in respect of any Permitted Additional Debt or the Effective Date Preferred Equity; provided, that (a) the Borrower may convert the Effective Date Preferred Equity into common stock of the Borrower in accordance with the Certificate of Designation and may make customary payments in cash in lieu of fractional shares in connection therewith, (b) the Borrower may voluntarily prepay such Permitted Additional Debt with the Proceeds of Permitted Refinancing Debt, (c) the Borrower may voluntarily redeem Effective Date Preferred Equity with any Restricted Payment permitted by Section 9.04(e), Section 9.04(f) or Section 9.04(j), (d) the Borrower may voluntarily Redeem any Permitted Additional Debt or the Effective Date Preferred Equity in exchange for or with the net cash proceeds of a substantially concurrent issuance of Equity Interests of the Borrower (other than Disqualified Capital Stock), and (e) following Payment in Full of the Term Loan and all amounts owing in connection therewith, the Borrower may voluntarily Redeem any Permitted Additional Debt so long as the conditions set forth in Section 9.04(e) or Section 9.04(f) would be satisfied if the amount of such Redemption were a Restricted Payment made pursuant thereto (and any such Redemption shall be deemed to be a Restricted Payment made pursuant to Section 9.04(e) or Section 9.04(f), as applicable, for all purposes of this Agreement, including for purposes of determining Available Free Cash Flow).

Section 9.23. Non-Qualified ECP Guarantors. The Borrower shall not permit any Credit Party that is not a Qualified ECP Guarantor to own, at any time, any Oil and Gas Properties or any Equity Interests in any Restricted Subsidiaries.

Section 9.24. Outbound Investment Rules. The Borrower will not, and will not permit any Subsidiary to, (a) be or become a "covered foreign person," as that term is defined in the Outbound Investment Rules, or (b) engage, directly or indirectly, in (i) a "covered activity" or a "covered transaction," as each such term is defined in the Outbound Investment Rules, (ii) any activity or transaction that would constitute a "covered activity" or a "covered transaction," as each such term is defined in the Outbound Investment Rules, if the Borrower were a U.S. Person or (iii) any other activity that would cause the Administrative Agent, the Collateral Agent or any Lender to be in violation of the Outbound Investment Rules or cause the Administrative Agent, the Collateral Agent or any Lender to be legally prohibited by the Outbound Investment Rules from performing under this Agreement.

Section 9.25. Anti-Corruption Laws and Sanctions. The Borrower will 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 (a) 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 Laws, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with or for the benefit of any Sanctioned Person or in any Sanctioned Country, in each case in violation of applicable Sanctions or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

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 any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement 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;

(b) the Borrower shall fail to pay any interest on any Loan or 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 three (3) Business 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, shall prove to have been incorrect in any material respect when made or deemed made (or if already qualified by materiality or Material Adverse Effect, incorrect in any 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 3.04(c)(ii), Section 8.02, Section 8.03, Section 8.14, Section 8.19, Section 8.20 or in 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) 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) notice thereof from the Administrative Agent to the Borrower (which notice will be given at the request of any Lender) or (ii) a Responsible Officer of the Borrower or such Restricted Subsidiary otherwise becoming aware of such default;

(f) the Borrower or any Restricted Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Debt, when and as the same shall become due and payable and such failure continues beyond any applicable grace period;

(g) (i) any event or condition (other than a termination event under a Swap Agreement) occurs that results in any Material Debt becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Debt or any trustee or agent on its or their behalf to cause any Material Debt 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; provided that this Section 10.01(g)(i) shall not apply to (A) secured Debt that becomes due as a result of the voluntary sale or transfer of the Property securing such Debt, if such sale or transfer is permitted hereunder or (B) any conversion of, or exercise of conversion rights in respect of, any Equity Interests or Debt into or for common Equity Interests of the Borrower (and cash in lieu of fractional shares), or (ii) there occurs under any Swap Agreement any termination event or similar event as to which a Credit Party or any Restricted Subsidiary is a defaulting party or affected party (however denominated) and, in either event, the Swap Termination Value owed by such Credit Party or such Restricted Subsidiary as a result thereof is greater than $25,000,000;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any Restricted Subsidiary as of such date 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 (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Restricted Subsidiary as of such date 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 Restricted Subsidiary as of such date shall (i) 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, (ii) 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), (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Restricted Subsidiary as of such date or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, or (vi) take any action for the purpose of effecting any of the foregoing;

(j) (i) one or more judgments for the payment of money in an aggregate amount in excess of $25,000,000 (to the extent not covered by independent third-party insurance provided by solvent and reputable insurers as to which the insurer does not dispute coverage and is not subject to an insolvency proceeding) or (ii) any one or more non-monetary judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, shall be rendered against the Borrower, any Restricted Subsidiary or any combination thereof and the same shall remain undischarged for a period of thirty (30) consecutive days during which execution shall not be effectively stayed;

(k) the Loan Documents 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 a Restricted Subsidiary party thereto or shall be repudiated by any of them, or cease to create a valid and perfected Lien of the priority required thereby in favor of the Collateral Agent on any material portion of the collateral purported to be covered thereby, except to the extent permitted by the terms of this Agreement, or the Borrower or any Restricted Subsidiary shall so state in writing;

(l) a Change in Control shall occur; and

(m) an ERISA Event shall have occurred that, when taken together with all other ERISA Events that have occurred, could reasonably be expected to have, individually or in the aggregate, 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 notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Revolving Commitments, and thereupon the Revolving 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 hereunder and under the Notes and the other Loan Documents (including, without limitation, the payment of cash collateral to secure the LC Exposure as provided in Section 2.08(j)), shall become due and payable immediately, 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; and in case of an Event of Default described in Section 10.01(h) or Section 10.01(i), the Revolving 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 hereunder and under the Notes and the other Loan Documents (including, without limitation, 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 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 of an Event of Default, the Administrative Agent, the Collateral Agent and the Lenders will have all other rights and remedies available at law and equity.

(c) All proceeds realized from the liquidation or other disposition of Collateral or otherwise received after maturity of the Loans, whether by acceleration or otherwise, shall be applied:

(i) first, to payment or reimbursement of that portion of the Indebtedness constituting fees, expenses and indemnities payable to the Agents in their respective capacities as such;

(ii) second, pro rata to payment or reimbursement of that portion of the Indebtedness 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 Loans, LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time, Indebtedness referred to in clause (b) of the definition of Indebtedness owing to Secured Swap Providers, and Indebtedness referred to in clause (c) of the definition of Indebtedness owing to Bank Products Providers;

(v) fifth, pro rata to any other Indebtedness;

(vi) sixth, to serve as cash collateral to be held by the Collateral Agent to secure the remaining LC Exposure; and

(vii) seventh, any excess, after Payment in Full, shall be paid to the Borrower or as otherwise required by any Governmental Requirement.

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 Indebtedness other than Excluded Swap Obligations as a result of this clause, the Administrative Agent shall make such adjustments as it determines 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 Indebtedness 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 Indebtedness pursuant to clause fourth above).

ARTICLE XI.

THE AGENTS

Section 11.01. Appointment; Powers. Each of the Lenders and each of the Issuing Banks hereby irrevocably appoints each of the Administrative Agent and the Collateral Agent as its agent and authorizes the Administrative Agent and the Collateral Agent, as applicable, to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent and to the Collateral Agent, as applicable, by the terms hereof and the other Loan Documents, together with such actions and powers as are reasonably incidental thereto.

Section 11.02. Duties and Obligations of Administrative Agent and Collateral Agent. Neither the Administrative Agent nor the Collateral Agent shall have any duties or obligations except those expressly set forth in the Loan Documents and applicable to it. Without limiting the generality of the foregoing, (a) neither the Administrative Agent nor the Collateral Agent shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing (the use of the term "agent" herein and in the other Loan Documents with reference to the Administrative Agent or to the Collateral Agent, as applicable, is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law; rather, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties), (b) neither the Administrative Agent nor the Collateral Agent shall have any duty to take any discretionary action or exercise any discretionary powers, except as provided in Section 11.03 and applicable to it, and (c) except as expressly set forth herein, neither the Administrative Agent nor the Collateral Agent shall have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent, Collateral Agent or any of their respective Affiliates in any capacity. Each of the Administrative Agent and the Collateral Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent or the Collateral Agent, as applicable, by the Borrower or a Lender, and shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or under any other Loan Document or in connection herewith or therewith, (iii) performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or in any other Loan Document (including, for the avoidance of doubt, in connection with the reliance by the Administrative Agent or the Collateral Agent, as applicable, on any Electronic Signature transmitted by telecopy, emailed .pdf, or any other electronic means that reproduces an image of an actual executed signature page), (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Article VI or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or to the Collateral Agent, as applicable, or as to those conditions precedent expressly required to be to the satisfaction of the Administrative Agent or the Collateral Agent, as applicable, (vi) the existence, value, perfection or priority of any collateral security or the financial or other condition of the Borrower and its Subsidiaries or any other obligor or guarantor, or (vii) any failure by the Borrower or any other Person (other than itself) to perform any of its obligations hereunder or under any other Loan Document or the performance or observance of any covenants, agreements or other terms or conditions set forth herein or therein. For purposes of determining compliance with the conditions specified in Article VI, each Lender shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent or the Collateral Agent, as applicable, shall have received written notice from such Lender prior to the proposed closing date specifying its objection thereto.

Section 11.03. Action by Administrative Agent and Collateral Agent. Neither the Administrative Agent nor the Collateral Agent shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent or the Collateral Agent, as applicable, is required to exercise in writing as directed by the Majority Lenders (or such other number, percentage or class of the Lenders as shall be necessary under the circumstances as provided in Section 12.02) and in all cases the Administrative Agent and the Collateral Agent shall be fully justified in failing or refusing to act hereunder or under any other Loan Documents unless such Agent shall (a) receive written instructions from the Majority Lenders or the Lenders, as applicable, (or such other number, percentage or class of the Lenders as shall be necessary under the circumstances as provided in Section 12.02) specifying the action to be taken and (b) be indemnified to its satisfaction by the Lenders against any and all liability and expenses which may be incurred by it by reason of taking or continuing to take any such action. The instructions as aforesaid and any action taken or failure to act pursuant thereto by the Administrative Agent or the Collateral Agent, as applicable, shall be binding on all of the Lenders. If a Default has occurred and is continuing, then the Administrative Agent and the Collateral Agent, as applicable, shall take such action with respect to such Default as shall be directed by the requisite Lenders to such Agent in the written instructions (with indemnities) described in this Section 11.03, provided that, unless and until the Administrative Agent or the Collateral Agent, as applicable, shall have received such directions, such Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default as it shall deem advisable in the best interests of the Lenders. In no event, however, shall the Administrative Agent or the Collateral Agent be required to take any action which exposes such Agent to personal liability or which is contrary to this Agreement, the Loan Documents or applicable law. If a Default has occurred and is continuing, no Arranger shall have any obligation to perform any act in respect thereof. Neither the Administrative Agent nor the Collateral Agent shall be liable for any action taken or not taken by it with the consent or at the request of the Majority Lenders or the Lenders (or such other number, percentage or class of the Lenders as shall be necessary under the circumstances as provided in Section 12.02), and otherwise neither the Administrative Agent nor the Collateral Agent shall be liable for any action taken or not taken by such Agent hereunder or under any other Loan Document or under any other document or instrument referred to or provided for herein or therein or in connection herewith or therewith INCLUDING ITS OWN ORDINARY NEGLIGENCE, except for its own gross negligence or willful misconduct.

Section 11.04. Reliance by Administrative Agent and Collateral Agent. The Administrative Agent and the Collateral Agent, as applicable, shall each be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by such Agent to be genuine and to have been signed or sent by the proper Person. The Administrative Agent and the Collateral Agent, as applicable, also may rely upon any statement made to such Agent orally or by telephone and believed by such Agent to be made by the proper Person, and shall not incur any liability for relying thereon and each of the Borrower, the Lenders and the Issuing Banks hereby waives the right to dispute the Administrative Agent's or the Collateral Agent's, as applicable, record of such statement, except in the case of gross negligence or willful misconduct by the Administrative Agent or the Collateral Agent, as applicable. The Administrative Agent and the Collateral Agent may each consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by such Agent, and shall not be liable for any action taken or not taken by such Agent in accordance with the advice of any such counsel, accountants or experts. The Administrative Agent and the Collateral Agent may deem and treat the payee of any Note as the holder thereof for all purposes hereof unless and until a written notice of the assignment or transfer thereof permitted hereunder shall have been filed with the Administrative Agent.

Section 11.05. Subagents. The Administrative Agent and the Collateral Agent, as applicable, may perform any and all such Agent's duties and exercise its rights and powers by or through any one or more sub-agents appointed by such Agent. The Administrative Agent, the Collateral Agent and any of their respective sub-agents may perform any and all its duties and exercise their respective rights and powers through their respective Related Parties. The exculpatory provisions of the preceding Sections of this Article XI shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and the Collateral Agent, as applicable, and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent and as Collateral Agent, as applicable.

Section 11.06. Resignation of Administrative Agent and Collateral Agent. Subject to the appointment and acceptance of a successor Administrative Agent or a successor Collateral Agent, as applicable, as provided in this Section 11.06, the Administrative Agent or the Collateral Agent may resign at any time by notifying the Lenders, the Issuing Banks and the Borrower. Upon any such resignation, the Majority Lenders shall have the right, in consultation with the Borrower, and with the consent of the Borrower if no Event of Default has occurred and is then continuing, to appoint a successor. If no successor shall have been so appointed by the Majority Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent or the retiring Collateral Agent, as applicable, gives notice of its resignation, then the retiring Administrative Agent or the retiring Collateral Agent, as applicable, may, on behalf of the Lenders and the Issuing Banks, appoint a successor Administrative Agent or a successor Collateral Agent, as applicable, which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. Upon the acceptance of its appointment as Administrative Agent or Collateral Agent, as applicable, hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent or the retiring Collateral Agent, as applicable, and the retiring Administrative Agent or the retiring Collateral Agent, as applicable, shall be discharged from its duties and obligations hereunder. The fees payable by the Borrower to a successor Administrative Agent or to a successor Collateral Agent, as applicable, shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the Administrative Agent's resignation or the Collateral Agent's resignation hereunder, as applicable, the provisions of this Section 11.06 and Section 12.03 shall continue in effect for the benefit of such retiring Administrative Agent or the retiring Collateral Agent, as applicable, such Agent's sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent or Collateral Agent, as applicable.

Section 11.07. Agents as Lenders. Each bank serving as an Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if it were not an Agent hereunder.

Section 11.08. No Reliance. Each Lender and each Issuing Bank represents and warrants that (a) the Loan Documents set forth the terms of a commercial lending facility, (b) in participating as a Lender, 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 investing in the general performance or operations of the Borrower, or for the purpose of purchasing, acquiring or holding any other type of financial instrument such as a security (and each Lender and each Issuing Bank agrees not to assert a claim in contravention of the foregoing, such as a claim under the federal or state securities laws), (c) 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 (d) 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 other Agent, any other Issuing Bank or any other Lender and based on such documents and information 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, any related agreement or any document furnished hereunder or thereunder. The Agents shall not be required to keep themselves informed as to the performance or observance by the Borrower or any of its Subsidiaries of this Agreement, the Loan Documents or any other document referred to or provided for herein or to inspect the Properties or books of the Borrower or its Subsidiaries. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders by the Administrative Agent hereunder, no Agent or Arranger shall have any duty or responsibility to provide any Lender or any Issuing Bank with any credit or other information concerning the affairs, financial condition or business of the Borrower (or any of its Affiliates) which may come into the possession of such Agent or any of its Affiliates. In this regard, each Lender acknowledges that Bracewell LLP is acting in this transaction as special counsel to the Administrative Agent only, except to the extent otherwise expressly stated in any legal opinion or any Loan Document. Each other party hereto will consult with its own legal counsel to the extent that it deems necessary in connection with the Loan Documents and the matters contemplated therein.

Section 11.09. Agents May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Borrower or any of its Subsidiaries, the Administrative Agent and the Collateral Agent (irrespective of whether the principal of any Loan 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, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Indebtedness 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 Collateral Agent and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Collateral Agent and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Collateral Agent and the Administrative Agent under Section 12.03) allowed in such judicial proceeding; and

(b) 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 judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent or the Collateral Agent, as applicable, and, in the event that the Administrative Agent or the Collateral Agent, as applicable, shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent or the Collateral Agent, as applicable, any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent, the Collateral Agent and their respective agents and counsel, and any other amounts due the Administrative Agent or the Collateral Agent, as applicable, under Section 12.03.

Nothing contained herein shall be deemed to authorize the Administrative Agent or the Collateral Agent, as applicable, to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Indebtedness or the rights of any Lender or to authorize the Administrative Agent or the Collateral Agent, as applicable, to vote in respect of the claim of any Lender in any such proceeding.

Section 11.10. Authority of Collateral Agent to Release Collateral, Liens and Guarantors. Each Lender and each Issuing Bank hereby authorizes the Collateral Agent to (a) release any Collateral that is permitted to be sold or released pursuant to the terms of the Loan Documents (including, without limitation, any Collateral owned by a Restricted Subsidiary that is redesignated as an Unrestricted Subsidiary in accordance with Section 9.20(c)), (b) release any Guarantor if 100% of the Equity Interests in such Guarantor are sold in a transaction permitted under the Loan Documents, (c) release all Collateral and Guarantors upon Payment in Full, (d) subordinate or release any Lien on any Property that is permitted by Section 9.03(c) or Section 9.03(e) and (e) release any Lien on any Property that constitutes an Excluded Asset. Each Lender and each Issuing Bank hereby authorizes the Collateral Agent to execute and deliver to the Borrower, at the Borrower's sole cost and expense, any and all releases of Liens, termination statements, assignments or other documents reasonably requested by the Borrower in connection with any sale or other disposition of Property to the extent such sale or other disposition is permitted by the terms of Section 9.11 or is otherwise authorized by the terms of the Loan Documents.

Section 11.11. The Arrangers. The Arrangers and other titles listed on the cover page hereof shall have no duties, responsibilities or liabilities under this Agreement and the other Loan Documents other than their duties, responsibilities and liabilities in their capacity as Administrative Agent, Collateral Agent, Issuing Banks, or Lenders hereunder.

Section 11.12. Credit Bidding. The Secured Parties hereby irrevocably authorize the Collateral Agent, at the direction of the Majority Lenders, to credit bid all or any portion of the Indebtedness (including by accepting some or all of the Collateral in satisfaction of some or all of the Indebtedness 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 (i) 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, or (ii) 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 Collateral Agent (whether by judicial action or otherwise) in accordance with any applicable law. In connection with any such credit bid and purchase, the Indebtedness owed to the Secured Parties shall be entitled to be, and shall be, credit bid by the Collateral Agent at the direction of the Majority Lenders on a ratable basis (with Indebtedness 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 (A) the Collateral Agent shall be authorized to form one or more acquisition vehicles and to assign any successful credit bid to such acquisition vehicle or vehicles, (B) each of the Secured Parties' ratable interests in the Indebtedness 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, (C) the Collateral Agent shall be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that, any actions by the Collateral 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), (D) the Collateral 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 Indebtedness which were credit bid, interests, whether as equity, partnership, 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 (E) to the extent that Indebtedness that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (including as a result of another bid being higher or better, because the amount of Indebtedness assigned to the acquisition vehicle exceeds the amount of Indebtedness credit bid by the acquisition vehicle or otherwise), such Indebtedness shall automatically be reassigned to the Secured Parties pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of such Indebtedness 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 Indebtedness of each Secured Party are deemed assigned to the acquisition vehicle or vehicles as set forth in clause (B) 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 Collateral 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 11.13. 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, 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 Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Commitments, the Term Loan Commitments or this Agreement;

(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 Revolving Commitments, the Term Loan Commitments and this Agreement, and the conditions for exemptive relief thereunder are and will continue to be satisfied in connection therewith;

(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 Revolving Commitments, the Term Loan Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Commitments, the Term Loan 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) and (k) 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 Revolving Commitments, the Term Loan 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 either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with 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 not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Commitments, the Term Loan Commitments and this Agreement (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 hereto or thereto).

Section 11.14. Acknowledgements of Lenders and Issuing Banks.

(a) If the Administrative Agent (x) notifies a Lender, Issuing Bank or Secured Party, or any Person who has received funds on behalf of a Lender, Issuing Bank or Secured Party (any such Lender, Issuing Bank, Secured Party or other recipient (and each of their respective successors and assigns), a "Payment Recipient") that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from the Administrative Agent) received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Issuing Bank, Secured Party or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and (y) demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent pending its return or repayment as contemplated below in this Section 11.14 and held in trust for the benefit of the Administrative Agent, and such Lender, Issuing Bank or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than one Business Day thereafter (or such later date as the Administrative Agent may, in its sole discretion, specify in writing), return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Administrative Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender, Issuing Bank, Secured Party or any Person who has received funds on behalf of a Lender, Issuing Bank or Secured Party (and each of their respective successors and assigns), agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender, Issuing Bank or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender, Issuing Bank or Secured Party shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 11.14(b).

For the avoidance of doubt, the failure to deliver a notice to the Administrative Agent pursuant to this Section 11.14(b) shall not have any effect on a Payment Recipient's obligations pursuant to Section 11.14(a) or on whether or not an Erroneous Payment has been made.

(c) Each Lender, Issuing Bank or Secured Party hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender, Issuing Bank or Secured Party under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender, Issuing Bank or Secured Party under any Loan Document with respect to any payment of principal, interest, fees or other amounts, against any amount that the Administrative Agent has demanded to be returned under immediately preceding clause (a).

(d)

(i) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor in accordance with immediately preceding clause (a), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "Erroneous Payment Return Deficiency"), upon the Administrative Agent's notice to such Lender at any time, then effective immediately (with the consideration therefor being acknowledged by the parties hereto), (A) such Lender shall be deemed to have assigned its Revolving Loans (but not its Revolving Commitments) or its Term Loans, as applicable, with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Class") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Revolving Loans (but not Revolving Commitments) or its Term Loans, as applicable, of the Erroneous Payment Impacted Class, the "Erroneous Payment Deficiency Assignment") (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance)), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to electronic communication procedures approved by the Administrative Agent as to which the Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent (but the failure of such Person to deliver any such Notes shall not affect the effectiveness of the foregoing assignment), (B) the Administrative Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (C) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Revolving Commitments which shall survive as to such assigning Lender, (D) the Administrative Agent and the Borrower shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment, and (E) the Administrative Agent will reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Revolving Commitments of any Lender and such Revolving Commitments shall remain available in accordance with the terms of this Agreement.

(ii) Subject to Section 12.04 (but excluding, in all events, any assignment consent or approval requirements (whether from the Borrower or otherwise)), the Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (x) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal and interest, received by the Administrative Agent on or with respect to any such Loans acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by the Administrative Agent) and (y) may, in the sole discretion of the Administrative Agent, be reduced by any amount specified by the Administrative Agent in writing to the applicable Lender from time to time.

(e) The parties hereto agree that (x) irrespective of whether the Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender, Issuing Bank or Secured Party, to the rights and interests of such Lender, Issuing Bank or Secured Party, as the case may be) under the Loan Documents with respect to such amount (the "Erroneous Payment Subrogation Rights") (provided that the Credit Parties' Indebtedness under the Loan Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Indebtedness in respect of Loans that have been assigned to the Administrative Agent under an Erroneous Payment Deficiency Assignment) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Indebtedness owed by the Borrower or any other Credit Party; provided that this Section 11.14 shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Indebtedness of the Borrower relative to the amount (and/or timing for payment) of the Indebtedness that would have been payable had such Erroneous Payment not been made by the Administrative Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on "discharge for value" or any similar doctrine.

(g) Each party's obligations, agreements and waivers under this Section 11.14 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender or Issuing Bank, the termination of the Revolving Commitments and/or the repayment, satisfaction or discharge of all Indebtedness (or any portion thereof) under any Loan Document.

(h) The Lenders acknowledge that there may be a constant flow of information (including information which may be subject to confidentiality obligations in favor of the Credit Parties) between the Credit Parties and their Affiliates, on the one hand, and Citi and its Affiliates, on the other hand. Without limiting the foregoing, the Credit Parties or their Affiliates may provide information including updates to previously provided information to Citi and its Affiliates acting in different capacities, including as Lender, lead bank, arranger or potential securities investor, independent of such entity's role as administrative agent hereunder. The Lenders acknowledge that neither Citi nor its Affiliates shall be under any obligation to provide any of the foregoing information to them. Notwithstanding anything to the contrary set forth herein or in any other Loan Document, except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent herein, the Administrative Agent shall not have any duty or responsibility to provide, and shall not be liable for the failure to provide, any Lender with any credit or other information concerning the Loans, the Lenders, the business prospects, operations, property, financial and other condition or creditworthiness of any of the Credit Parties or any of their respective Affiliates that is communicated to, obtained by, or in the possession of the Administrative Agent or any of its Affiliates in any capacity, including any information obtained by the Administrative Agent in the course of communications among the Administrative Agent and any Credit Party, any Affiliate thereof or any other Person. Notwithstanding the foregoing, any such information may (but shall not be required to) be shared by the Administrative Agent with one or more Lenders, or any formal or informal committee or ad hoc group of such Lenders, including at the direction of a Credit Party.

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, as follows:

(i) if to the Borrower, to it at HighPeak Energy, Inc., Attn: Chief Financial Officer, 421 W. 3rd St., Suite 1000, Fort Worth, TX 76102

(ii) if to the Administrative Agent, the Collateral Agent or Citi in its capacity as an Issuing Bank, to it at 811 Main Street, Floor 40, Houston, TX 77002; and

(iii) if to any other Lender, to it at its address (or facsimile number) set forth in its Administrative Questionnaire.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II, Article III, Article IV and Article V unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent, the 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.

Section 12.02. Waivers; Amendments.

(a) No failure on the part of any Agent, the Issuing Banks, 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 any Agent, the Issuing Banks, 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 any Agent, any Lender, or the Issuing Banks may have had notice or knowledge of such Default at the time.

(b) Subject to Section 3.03(b), (c) and (d), neither this Agreement nor any provision hereof nor any Security Instrument nor, in each case, 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 Commitment, the Elected Commitment or the Maximum Credit Amount of any Lender without the written consent of such Lender, or modify Section 2.06 in any manner that results in the Aggregate Elected Commitment Amounts being terminated without the contemporaneous termination of the Revolving Commitments without the consent of each Revolving Lender, (ii) increase the Borrowing Base without the written consent of each Lender, decrease or maintain the Borrowing Base without the consent of the Required Lenders, or modify Section 2.07 in any manner that results in an increase in the Borrowing Base without the consent of each Lender (other than any Defaulting Lender); provided that any waiver of the automatic decrease in the Borrowing Base set forth in Section 2.07(f) shall only require the consent of Lenders constituting at least the Required Lenders, (iii) 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 Indebtedness hereunder or under any other Loan Document, without the written consent of each Lender affected thereby, (iv) postpone the scheduled date of payment or prepayment of the principal amount of any Loan or LC Disbursement, or any interest thereon, or any fees payable hereunder, or any other Indebtedness hereunder or under any other Loan Document, or reduce the amount of, waive or excuse any such payment, or postpone or extend the Revolving Maturity Date or the Term Maturity Date without the written consent of each Lender affected thereby, (v) (A) change Section 4.01(b) or Section 4.01(c) in a manner that would alter the pro rata sharing of payments required thereby, (B) subordinate any of the Indebtedness owed to the Lenders in right of payment or (C) except in accordance with Section 11.10(d), subordinate any of the Liens securing the Indebtedness owed to the Lenders, in each case, without the written consent of each Lender, (vi) waive, amend, modify or otherwise affect in any adverse manner, the interests, rights or obligations of the Revolving Lenders hereunder if such waiver, amendment or modification affects the interests, rights or obligations of the Revolving Lenders in a manner substantially different from and more adverse than the effect of such waiver, amendment or modification on the Term Lenders without the written consent of the Majority Revolving Lenders and the Majority Lenders, (vii) waive, amend, modify or otherwise affect in any adverse manner, the interests, rights or obligations of the Term Lenders hereunder if such waiver, amendment or modification affects the interests, rights or obligations of the Term Lenders in a manner substantially different from and more adverse than the effect of such waiver, amendment or modification on the Revolving Lenders without the written consent of the Majority Term Lenders and the Majority Lenders, (viii) waive or amend Section 3.04(c), Section 6.01, Section 10.02(c) (or amend any of the defined terms in such Section if the result would be to alter the priority of payments in respect of Collateral proceeds) or change the definition of the terms "Domestic Subsidiary", "Foreign Subsidiary", or "Subsidiary", without the written consent of each Lender (other than any Defaulting Lender), (ix) waive or amend Section 2.08 without the written consent of the Majority Revolving Lenders (other than any Defaulting Lender), (x) release any Guarantor (except as set forth in Section 11.10 or in the Guaranty Agreement), release all or substantially all of the Collateral (other than as provided in Section 11.10) or reduce the percentage set forth in Section 8.14(a) to less than 85%, without the written consent of each Lender (other than any Defaulting Lender), (xi) change (A) any of the provisions of this Section 12.02(b) or the definition of the terms "Majority Lenders," "Super-Majority Lenders" or any other provision hereof specifying the number, percentage or class 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 (other than any Defaulting Lender), (B) "Majority Revolving Lenders" or "Revolving Applicable Percentage" without the written consent of each Revolving Lender (other than any Defaulting Lender) or (C) "Majority Term Lenders" without the written consent of each Term Lender (other than any Defaulting Lender), (xii) amend Section 2.06(c)(x) without the written consent of each Lender, or permit interest periods in excess of six months without the consent of each Lender affected thereby; provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of any Agent, or any Issuing Bank hereunder or under any other Loan Document without the prior written consent of such Agent, such other Agent, or the applicable Issuing Bank, as the case may be. Notwithstanding the foregoing, (A) any supplement to Schedule 7.13 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, (B) the Borrower and the Administrative Agent or the Collateral Agent, as applicable, 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 or defect or correct any typographical error or other manifest error in any Loan Document, (C) the Collateral Agent and the Borrower (or other applicable Credit Party) may enter into any amendment, modification or waiver of this Agreement or any other Loan Document or enter into any agreement or instrument to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Mortgaged Property or Property to become Mortgaged Property to secure the Indebtedness for the benefit of the Lenders or as required by any Governmental Requirement to give effect to, protect or otherwise enhance the rights or benefits of the Lenders under the Loan Documents without the consent of any Lender and (D) the Borrower and the Administrative Agent may amend this Agreement or any other Loan Document without the consent of the Lenders to make this Agreement or such other Loan Document more restrictive on the Borrower and its Subsidiaries.

Section 12.03. Expenses, Indemnity; Damage Waiver.

(a) The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Agents, the Arrangers and their Affiliates, including, without limitation, the reasonable and documented fees, charges and disbursements of counsel and other outside consultants for the Agents and the Arrangers, the reasonable travel, photocopy, mailing, courier, telephone and other similar expenses, and, solely during the continuance of an Event of Default, the reasonable cost of environmental invasive and non-invasive assessments and audits and surveys and appraisals, in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration (both before and after the execution hereof and including advice of counsel to the Agents and the Arrangers as to the rights and duties of the Agents, the Arrangers 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 and Other Taxes incurred by any Agent 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 out-of-pocket expenses incurred by any 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 out-of-pocket expenses incurred by any Agent, any Arranger, any Issuing Bank, or any Lender, including the fees, charges and disbursements of any counsel and any other outside consultants for any Agent, any Arranger, any Issuing Banks or any Lender, 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, without limitation, all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) THE BORROWER SHALL INDEMNIFY EACH AGENT, THE ARRANGERS, THE ISSUING BANKS, 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 AND ALL COUNSELS FOR ANY INDEMNITEE, 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, 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, (ii) ANY ACTION TAKEN IN CONNECTION WITH THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE PAYMENT OF PRINCIPAL, INTEREST AND FEES, (iii) THE FAILURE OF THE BORROWER OR ANY SUBSIDIARY TO COMPLY WITH THE TERMS OF ANY LOAN DOCUMENT, INCLUDING THIS AGREEMENT, OR WITH ANY GOVERNMENTAL REQUIREMENT, (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, WITHOUT LIMITATION, (A) ANY REFUSAL BY AN 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 (B) THE PAYMENT OF A DRAWING UNDER ANY LETTER OF CREDIT NOTWITHSTANDING THE NON-COMPLIANCE, NON-DELIVERY OR OTHER IMPROPER PRESENTATION OF THE DOCUMENTS PRESENTED IN CONNECTION THEREWITH, (vi) ANY OTHER ASPECT OF THE LOAN DOCUMENTS, (vii) THE OPERATIONS OF THE BUSINESS OF THE BORROWER AND ITS SUBSIDIARIES BY THE BORROWER AND ITS SUBSIDIARIES, (viii) ANY ASSERTION THAT THE LENDERS WERE NOT ENTITLED TO RECEIVE THE PROCEEDS RECEIVED PURSUANT TO THE SECURITY INSTRUMENTS, (ix) ANY ENVIRONMENTAL LAW APPLICABLE TO THE BORROWER OR ANY SUBSIDIARY OR ANY OF THEIR PROPERTIES OR OPERATIONS, INCLUDING, 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, (x) THE BREACH OR NON-COMPLIANCE BY THE BORROWER OR ANY SUBSIDIARY WITH ANY ENVIRONMENTAL LAW APPLICABLE TO THE BORROWER OR ANY SUBSIDIARY, (xi) 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, (xii) 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 ITS SUBSIDIARIES, (xiii) ANY ENVIRONMENTAL LIABILITY RELATED IN ANY WAY TO THE BORROWER OR ANY OF ITS SUBSIDIARIES, OR (xiv) ANY OTHER ENVIRONMENTAL, HEALTH OR SAFETY CONDITION IN CONNECTION WITH THE LOAN DOCUMENTS, OR (xv) ANY ACTUAL OR PROSPECTIVE CLAIM, LITIGATION, INVESTIGATION OR PROCEEDING RELATING TO ANY OF THE FOREGOING, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY AND REGARDLESS OF WHETHER ANY INDEMNITEE IS A PARTY THERETO, 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 THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNITEE. THIS SECTION 12.03(B) SHALL NOT APPLY WITH RESPECT TO TAXES OTHER THAN ANY TAXES THAT REPRESENT LOSSES, CLAIMS, DAMAGES, ETC. ARISING FROM ANY NON-TAX CLAIM.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to any Agent, the Arrangers, or the Issuing Banks under Section 12.03(a) or (b), each Lender severally agrees to pay to such Agent, the Arrangers, or the Issuing Banks, 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; 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 such Agent, the Arrangers, or the Issuing Banks in its capacity as such.

(d) To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof.

(e) All amounts due under this Section 12.03 shall be payable within ten (10) days after written demand therefor, accompanied by a statement reflecting amounts payable in reasonable detail.

Section 12.04. Successors and Assigns.

(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 an Issuing Bank that issues any Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) 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 an 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 Agents, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of 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, conditioned or delayed) of:

(A) the Borrower, provided that 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 has occurred and is continuing; provided, further, that if the Borrower has not responded within ten (10) Business Days after the delivery of any request for a consent, such consent shall be deemed to have been given; and

(B) the Administrative Agent, the Collateral Agent, and the Issuing Banks, provided that (1) no consent of the Agents shall be required for an assignment by a Revolving Lender to an assignee that is a Revolving Lender immediately prior to giving effect to such assignment, (2) no consent of the Agents or the Issuing Banks shall be required for an assignment by a Term Lender to an assignee that is a Term Lender immediately prior to giving effect to such assignment and (3) no consent of the Issuing Banks shall be required for an assignment by a Term Lender.

(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 Approved Fund 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 $5,000,000 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 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, including without limitation, its Revolving Commitment, Maximum Credit Amount, LC Exposure, participations in Letters of Credit, outstanding Revolving Loans and outstanding Term Loans;

(C) each total assignment shall be made as an assignment of all the assigning Lender's rights and obligations under this Agreement, including, without limitation, its Revolving Commitment, Maximum Credit Amount, LC Exposure, participations in Letters of Credit, outstanding Revolving Loans and outstanding Term Loans;

(D) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500;

(E) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire; and

(F) in no event may any Lender assign all or a portion of its rights and obligations under this Agreement to the Borrower, any Affiliate of the Borrower, any Defaulting Lender, any natural person or a holding company, investment vehicle or trust for, or owned and operated for, the primary benefit of a natural person.

(iii) Subject to Section 12.04(b)(iv) and the acceptance and recording thereof, 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). 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 solely 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 and addresses of the Lenders, the Maximum Credit Amount and Elected Commitment of, and principal amount (and stated interest) of the Loans and 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, and the Borrower, the Administrative Agent, the Collateral Agent, the Issuing Banks, 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 Banks, 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 Banks, the Collateral Agent and each Lender. This Section 12.04(b)(iv) shall be construed so that all Loans are at all times maintained in "registered form" within the meaning of Section 5f.103-1(c) of the United States Treasury Regulations, Section 1.163-5 of the proposed United States Treasury Regulations or any applicable temporary or other successor regulation of the United States Treasury Regulations.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, 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) (i) Any Lender may, without the consent of the Borrower, the Administrative Agent, the Collateral Agent or the Issuing Banks, sell participations to one or more banks or other Persons (other than the Borrower, any Affiliate of the Borrower or any natural 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 (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (C) the Borrower, the Administrative Agent, the Collateral Agent, the Issuing Banks 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. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided 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 proviso to Section 12.02 that affects such Participant. In addition such agreement must provide that the Participant be bound by the provisions of Section 12.03. Subject to Section 12.04(c)(ii), the Borrower agrees that each Participant shall be entitled to the benefits of Section 5.01, Section 5.02 and Section 5.03 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 12.04(b). 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 such Participant agrees to be subject to Section 4.01(c) and Section 5.04 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 5.04(b) with respect to any Participant. 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 commitments, loans, letters of credit 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, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations, Section 1.163-5 of the proposed United States Treasury Regulations or any applicable temporary or other successor regulation 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.

(ii) Each Participant agrees (A) to be subject to the provisions of Section 5.03 (subject to the requirements and limitations therein, including the requirements under Section 5.03(f) and (g) (it being understood that the documentation required under Section 5.03(f) and (g) shall be delivered to the participating Lender)) as if it were an assignee under clause (b) of this Section; and (B) that it shall not be entitled to receive any greater payment under Section 5.01 or Section 5.03, with respect to any participation, than its participating Lender would have been entitled to receive, 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.

(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, without limitation, 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 the Borrower and the Guarantors 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 any Agent, any 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 and so long as the Revolving Commitments have not expired or terminated. The provisions of Section 5.01, Section 5.02, Section 5.03 and Section 12.05 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 Revolving 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 Indebtedness 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 Indebtedness so satisfied shall be revived and continue as if such payment or proceeds had not been received and the Agents' 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 Agents 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 any 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 WITH RESPECT TO THE SUBJECT MATTER CONTAINED HEREIN AND THEREIN 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 Agents 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 (x) this Agreement (y) any other Loan Document and/or (z) 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 (in each case, as permitted by Section 12.01, such other Loan Document or Ancillary Document, as applicable) 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, (i) to the extent the Administrative Agent has agreed to accept any Electronic Signature, the Administrative Agent, the Collateral 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 (ii) upon the request of any 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 (i) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Agents, the Lenders, the Borrower and the Credit Parties, Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means (in each case, as permitted by Section 12.01, such other Loan Document or Ancillary Document, as applicable) 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, (ii) each 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), (iii) 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 (iv) waives any claim against any Lender or its Related Parties for any losses, claims (including intraparty claims), demands, damages or liabilities of any kind arising solely from any 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 losses, claims (including intraparty claims), demands, damages or liabilities of any kind 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 of its Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, 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) at any time held and other obligations (of whatsoever kind, including, without limitations obligations under Swap Agreements) at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrower or any Restricted Subsidiary against any of and all the obligations of the Borrower or any Restricted Subsidiary owed to such Lender now or hereafter existing under this Agreement or any other Loan Document, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations may be unmatured. The rights of each Lender under this Section 12.08 are in addition to other rights and remedies (including other rights of setoff) which such Lender or its Affiliates may have.

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 EXCEPT TO THE EXTENT THAT UNITED STATES FEDERAL LAW PERMITS ANY LENDER TO CONTRACT FOR, CHARGE, RECEIVE, RESERVE OR TAKE INTEREST AT THE RATE ALLOWED BY THE LAWS OF THE STATE WHERE SUCH LENDER IS LOCATED.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THE LOAN DOCUMENTS MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, IN EITHER CASE LOCATED IN NEW YORK COUNTY, NEW YORK, 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 JURISDICTION OF THE AFORESAID COURTS. 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. THIS SUBMISSION TO JURISDICTION IS NON-EXCLUSIVE AND DOES NOT PRECLUDE A PARTY FROM OBTAINING JURISDICTION OVER ANOTHER PARTY IN ANY COURT OTHERWISE HAVING JURISDICTION.

(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. 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.

(d) EACH PARTY HEREBY (i) 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, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES; PROVIDED THAT THE FOREGOING SHALL NOT LIMIT THE INDEMNITY AND REIMBURSEMENT OBLIGATIONS TO THE EXTENT SET FORTH IN SECTION 12.03(b) IN RESPECT OF ANY THIRD PARTY CLAIMS ALLEGING SUCH SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES; (iii) CERTIFIES THAT NO PARTY HERETO NOR ANY REPRESENTATIVE OR AGENT OR 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 (iv) 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 Agents, the Issuing Banks, and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to any Lenders or participants or prospective Lenders or prospective participants or any affiliated hedge provider of any Lender or prospective Lender, (b) pursuant to the order of any court or administrative agency or in any judicial or administrative proceeding or as otherwise required by law or compulsory legal process (in which case the applicable Person shall use commercially reasonable efforts to promptly notify the Borrower, in advance, to the extent practicable and permitted by law), (c) upon the request or demand of any regulatory authority having jurisdiction over any of the Agents, the Issuing Banks, and the Lenders (in which case the applicable Agent, Issuing Bank, or Lender shall use commercially reasonable efforts to, except with respect to any audit or examination conducted by bank accountants or any governmental regulatory authority exercising examination or regulatory authority, promptly notify you, in advance, to the extent practicable and permitted by law), (d) to respective Affiliates involved in the Transactions and their and their Affiliates' respective directors, officers, employees, accountants, attorneys, agents and other professional advisors whom the applicable Agent, the Issuing Bank, or the Lender has informed of the confidential nature of such information, (e) to the extent that such information is independently developed by the Agents, the Issuing Banks, or the Lenders, so long as the Agents, the Issuing Banks, and the Lenders have not otherwise breached their confidentiality obligations hereunder and have not developed such information based on information received from a third party that to their knowledge has breached confidentiality obligations owing to you, (f) to the extent any such information is or becomes publicly available other than by reason of disclosure by the Agents, the Issuing Banks, and the Lenders in breach of this provision, (g) to the extent that such information is received by an Agent, the Issuing Bank, or Lender or any of their respective Affiliates from a third party that is not to its knowledge subject to confidentiality obligations to you or your affiliates, (h) for purposes of establishing a "due diligence" defense, (i) in connection with the exercise of any remedies hereunder, any action or proceeding relating to any Loan Document, or the enforcement of rights hereunder or thereunder, (j) to ratings agencies in connection with the Transactions, or (k) with the prior written consent of the Borrower. For the purposes of this Section 12.11, "Information" means all information received from the Borrower or any Restricted Subsidiary relating to the Borrower or any Restricted Subsidiary and their businesses, other than any such information that is available to the Agents, the Issuing Banks, or any Lender on a nonconfidential basis prior to disclosure by the Borrower or a Restricted Subsidiary; provided that, in the case of information received from the Borrower or any Restricted Subsidiary after the Effective Date, such information is clearly identified at the time of delivery as confidential. 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. Notwithstanding anything herein to the contrary, "Information" shall not include, and the Borrower, the Borrower's Restricted Subsidiaries, each Agent, each Lender and the respective Affiliates of each of the foregoing (and the respective partners, directors, officers, employees, agents, advisors and other representatives of the aforementioned Persons), and any other party, may disclose to any and all Persons, without limitation of any kind (A) any information with respect to the United States federal and state income tax treatment of the transactions contemplated hereby and any facts that may be relevant to understanding the United States federal or state income tax treatment of such transactions ("tax structure"), which facts shall not include for this purpose the names of the parties or any other person named herein, or information that would permit identification of the parties or such other persons, or any pricing terms or other nonpublic business or financial information that is unrelated to such tax treatment or tax structure, and (B) all materials of any kind (including opinions or other tax analyses) that are provided to the Borrower, such Agent or such Lender relating to such tax treatment or tax structure. For the avoidance of doubt, nothing in this Section 12.11 shall prohibit any Person from voluntarily disclosing or providing any Information within the scope of this confidentiality provision to any governmental, regulatory or self-regulatory organization (any such entity, a "Regulatory Authority") to the extent that any such prohibition on disclosure set forth in this Section 12.11 shall be prohibited by the laws or regulations applicable to such Regulatory Authority, or from communicating or disclosing Information regarding suspected violations of laws, rules, or regulations to any such Regulatory Authority without any notification to any Person. The parties hereto do not anticipate any disclosure of personal information of California residents to Citi, or any collection or processing of personal information of California residents, in connection with the Transactions and Citi's services contemplated under this Agreement and the other Loan Documents; provided, however, that to the extent any California personal information subject to the California Privacy Rights Act ("CPRA") and its implementing regulations is disclosed by any Credit Party to Citi and is covered by the CPRA and its implementing regulations, Citi agrees to process such personal information only for the limited and specified business purposes of facilitating the execution of the Transactions or as otherwise provided by, and in compliance with, the CPRA.

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 and the State of Texas or any 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 Indebtedness (or, to the extent that the principal amount of the Indebtedness 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 Indebtedness (or, to the extent that the principal amount of the Indebtedness 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 evidenced by the Notes 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 (i) 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 (ii) 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. To the extent that Chapter 303 of the Texas Finance Code is relevant for the purpose of determining the Highest Lawful Rate applicable to a Lender, such Lender elects to determine the applicable rate ceiling under such Chapter by the weekly ceiling from time to time in effect. Chapter 346 of the Texas Finance Code does not apply to the Borrower's obligations hereunder.

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. No Third Party Beneficiaries. This Agreement, the other Loan Documents, and the agreement of the Lenders to make Loans and the Issuing Banks to issue, amend, renew or extend Letters of Credit hereunder are solely for the benefit of the Borrower, and no other Person (including, without limitation, any Subsidiary of the Borrower, any obligor, contractor, subcontractor, supplier or materialsman) shall have any rights, claims, remedies or privileges hereunder or under any other Loan Document against any Agent, the Issuing Banks or any Lender for any reason whatsoever. There are no third party beneficiaries.

Section 12.15. USA Patriot Act Notice. 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 "Patriot Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Patriot 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 agency relationship between the Borrower and its Subsidiaries and any Agent, any Arranger 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 any Agent, any Arranger or any Lender has advised or is advising the Borrower or any Subsidiary on other matters; (ii) the arranging and other services regarding this Agreement provided by the Agents, the Arrangers and the Lenders are arm's-length commercial transactions between the Borrower and its Subsidiaries, on the one hand, and Agents, the Arrangers 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 Agents, the Arrangers 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 its Subsidiaries, or any other Person; (ii) neither the Agents nor the Arrangers 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 Agents, the Arrangers 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 neither the Agents nor the Arrangers 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 Agents, the Arrangers and the Lenders with respect to any breach or alleged breach of agency 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 the applicable 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) a 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 any Swap Agreement 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 Regime") 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.

[SIGNATURES BEGIN NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

BORROWER:

HIGHPEAK ENERGY, INC.,
a Delaware corporation

By: /s/ Steven Tholen
Name: Steven Tholen
Title: Chief Financial Officer

ADMINISTRATIVE AGENT, COLLATERAL AGENT, AN ISSUING BANK, AND A LENDER:

CITIBANK, N.A.,
as Administrative Agent, Collateral Agent,
an Issuing Bank, and a Lender

By: /s/ Paul L Colón
Name: Paul L Colón
Title: Authorized Signatory

LENDERS:

FIFTH THIRD BANK,
NATIONAL ASSOCIATION
as an Issuing Bank and a Lender

By: /s/ Dan Condley
Name: Dan Condley
Title: Managing Director

BANK OZK
as an Issuing Bank and a Lender

By: /s/ Ed Pak
Name: Ed Pak
Title: Managing Director

CITIZENS BANK, N.A.
as an Issuing Bank and a Lender

By: /s/ David Baron
Name: David Baron
Title: Senior Vice President

THE HUNTINGTON NATIONAL BANK
as an Issuing Bank and a Lender

By: /s/ Molly Zlotnik
Name: Molly Zlotnik
Title: Vice President

KEYBANK NATIONAL ASSOCIATION
as an Issuing Bank and a Lender

By: /s/ David Bornstein
Name: David Bornstein
Title: Senior Vice President

GOLDMAN SACHS BANK USA
as a Lender

By: /s/ Sara Lachapelle
Name: Sara Lachapelle
Title: Authorized Signatory

FIRST-CITIZENS BANK &
TRUST COMPANY
as a Lender

By: /s/ Kelly Hall
Name: Kelly Hall
Title: Director

REGIONS BANK
as a Lender

By: /s/ Michael Kolosowsky
Name: Michael Kolosowsky
Title: Managing Director

COMMERCE BANK
as a Lender

By: /s/ Chase B. Proctor
Name: Chase B. Proctor
Title: Senior Vice President

FIRST FINANCIAL BANK
as a Lender

By: /s/ Erica Spencer
Name: Erica Spencer
Title: Managing Director

FIRST HORIZON BANK
as a Lender

By: /s/ W. David McCarver IV
Name: W. David McCarver IV
Title: Senior Vice President

FLAGSTAR BANK, N.A.
as a Lender

By: /s/ Meghan Jackson
Name: Meghan Jackson
Title: Senior Vice President

SOUTHSTATE BANK N.A.
as a Lender

By: /s/ Philip Mortimer
Name: Philip Mortimer
Title: Senior Vice President

UMB BANK, N.A.
as a Lender

By: /s/ Parker Heikes
Name: Parker Heikes
Title: Director

Exhibit 10.6

Execution Version

AMENDMENT TO THE

SECURITIES PURCHASE AGREEMENT

This Amendment to the Securities Purchase Agreement (this "**Amendment**") is made and entered into effective as of November 12, 2026, by and among the undersigned Purchaser (the "**Purchaser**") and HighPeak Energy, Inc. (the "**Company**"), and amends that certain Securities Purchase Agreement, dated as of October 6, 2026, by and between the Purchaser and the Company (the "**Purchase Agreement**"). Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Purchase Agreement.

RECITALS

WHEREAS, the Purchaser and the Company have agreed to amend the Purchase Agreement to (i) modify designation, election and resignation of the Series A Directors, and (ii) revise the form of the Certificate of Designation attached as Exhibit B to the Purchase Agreement.

WHEREAS, pursuant to Section 6.12 of the Purchase Agreement, any amendment to the Purchase Agreement requires the written consent of the Company and the Purchaser.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Amendment to Purchase Agreement.

(a) Section 1.2 of the Purchase Agreement is hereby amended as follows to include the text marked in blue underline as follows:

"On the terms and subject to the satisfaction or waiver (to the extent permitted by applicable Law) of the conditions set forth in this Agreement, the closing of the issuance, sale and purchase of the Purchased Shares (the "Closing") shall take place remotely via the exchange of final documents and signature pages, within ten (10) Business Days following the satisfaction or waiver of all of the conditions set forth in Article V (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver (to the extent permitted by applicable Law) of those conditions at such time), or such other time and place as the Company and Purchaser may agree; provided that the Closing shall occur no earlier than November 20, 2026. The date on which the Closing is to occur is herein referred to as the "Closing Date.""

(b) Section 4.1(c) of the Purchase Agreement is hereby amended as follows to include the text marked in blue underline as follows:

"(c) During the Nomination Period and the Additional Nomination Period (if applicable), the Company agrees to: (i) include the Purchaser Nominee(s) as a nominee for election to the Board of Directors at any annual meeting of the stockholders of the Company held for the election of directors of the Company during the Nomination Period and the Additional Nomination Period (if applicable) at which the term of office of the class of directors to which the applicable Purchaser Director or Purchaser Nominee has been assigned expires (each a "Class Election Meeting"); (ii) include the Purchaser Nominee(s) in the Company's notice of each Class Election Meeting; and (iii) recommend the election of the Purchaser Nominee(s) by the stockholders of the Company at each Class Election Meeting. For so long as the Board of Directors is divided into classes pursuant to the Certificate of Incorporation, each Purchaser Nominee (other than any Holder Designee deemed to be a Purchaser Director pursuant to Section 4.1(a) and any Purchaser Nominee who has been nominated or appointed to fill a vacancy in accordance with this Section 4.1) shall be initially assigned by the Board of Directors to the class of directors whose term expires at the next annual meeting of the stockholders of the Company. The Purchaser Nominee(s) shall comply with the corporate governance principles, confidentiality obligations and practices of the Company as in effect from time to time and applicable to directors generally, including the Company's Code of Conduct, the Company's Financial Code of Ethics and the Company's Insider Trading Policy (the "Governance Principles"). In the event that the Purchaser has the right to nominate two Purchaser Nominees and, together with its Affiliates, ceases to beneficially own (within the meaning of Rule 13d-3 under the Exchange Act) Purchased Shares issued to the Purchaser at the Closing and/or Conversion Shares collectively representing 10% or more of the outstanding shares of the Company's Common Stock, in the aggregate, which shall be determined assuming the conversion of all of the shares of Series A Preferred Stock, the Purchaser shall take all lawful action to cause one of its designated Purchaser Directors then serving on the Board of Directors to resign on or before the next annual meeting of the stockholders of the Company, which resignation may be conditioned on the acceptance thereof by the Board of Directors. If at any point during the Nomination Period (or the Additional Nomination Period), any Purchaser Director resigns from the Board (including due to failure to meet the Qualification Criteria) or is rendered unable (due to death or disability) to, or refuses to, serve on the Board for any reason, then Purchaser shall identify a replacement (who shall satisfy the Qualification Criteria) to fill the resulting vacancy caused by such Purchaser Director's departure from the Board and any such person shall be promptly appointed by the Board as a Purchaser Director. In the event that the Purchaser, together with its Affiliates, ceases to beneficially own (within the meaning of Rule 13d-3 under the Exchange Act) Purchased Shares issued to the Purchaser at the Closing and/or Conversion Shares collectively representing 5% of the outstanding shares of the Company's Common Stock, in the aggregate, which shall be determined assuming the conversion of all of the shares of Series A Preferred Stock, the Purchaser shall take all lawful action to cause each of its designated Purchaser Directors then serving on the Board of Directors to resign on or before the next annual meeting of the stockholders, which resignation may be conditioned on the acceptance thereof by the Board of Directors.

(c) The Purchase Agreement is hereby amended to add a new provision as Section 4.1(h) of the Purchase Agreement, to read as follows:

"(h) Notwithstanding anything to the contrary in this Agreement or in the Certificate of Designation, at no time shall Purchaser, its Permitted Transferees and/or any Board Rights Transferee be entitled to designate a number of directors that would exceed the number obtained by multiplying (x) the sum of (1) the then-aggregate Ownership Percentage of Purchaser, its Permitted Transferees and/or any Board Rights Transferee, as applicable, and (2) the then-aggregate Ownership Percentage of the Other Purchaser, by (y) the then-current total number of directors constituting the Board, rounded up to the nearest whole number. "Ownership Percentage" shall mean, with respect to any Person as of any date of determination, the percentage obtained by dividing (A) the aggregate number of votes that such Person is entitled to cast on the election of directors by the stockholders of the Company generally, in respect of all shares of Common Stock and Series A Preferred Stock held of record by such Person as of such date, by (B) the aggregate number of votes in the aggregate that all holders of outstanding shares of the Company's voting capital stock are entitled to cast on such matters as of such date. If the then-aggregate Ownership Percentage of Purchaser, its Permitted Transferees and/or any Board Rights Transferee is at least 10% and the application of the first sentence of this Section 4.1(h) would result in a reduction in the number of Purchaser Directors that Purchaser, its Permitted Transferees and/or any Board Rights Transferee would otherwise be entitled to nominate or designate hereunder, then, upon written notice from Purchaser, its Permitted Transferees and/or any Board Rights Transferee, within ninety (90) days of delivery of such written notice, the Boad of Directors shall increase the size of the Board of Directors by one (1) director and appoint an additional individual (who shall be an "Independent Director" under Nasdaq Rule 5605(a)(2) (or the equivalent rules of any other stock exchange on which the Company's securities are listed)) to the Board of Directors such that the limitation in the first sentence of this Section 4.1(h) is not triggered."

(d) The Purchase Agreement is hereby amended to add a new provision as Section 4.1(i) of the Purchase Agreement, to read as follows:

"(i) For so long as either the Purchaser, any of its Permitted Transferees or its Board Rights Transferee has (or has together with the Other Purchaser and its Permitted Transferees or Board Rights Transferee) the right to two Series A Directors and/or Purchaser Directors (including any Purchaser Director under the Concurrent Series A Preferred Stock Purchase Agreement), the Company shall not, without the prior consent of the Purchaser or its Board Rights Transferee, as applicable, decrease the size of the Board of Directors to fewer than nine (9) directors."

(e) Exhibit B to the Purchase Agreement is hereby amended, restated and replaced in its entirety with a new Exhibit B in the form attached as Exhibit A hereto.

2. No Other Amendments; Conflicts. No term or provision of the Purchase Agreement shall be affected by this Amendment unless specifically set forth herein, and any term or provision not affected by this Amendment shall remain in full force and effect following the date hereof. In the event of a conflict between the terms of the Purchase Agreement and the terms of this Amendment, the terms of this Amendment shall control.

3. Governing Law. This Amendment 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) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

4. Severability. Any provision hereof that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof, provided, however, that the parties will attempt in good faith to reform this Amendment in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent.

5. Counterparts. This Amendment may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and will become effective when one or more counterparts have been signed by a party and delivered to the other parties. Copies of executed counterparts of signature pages to this Amendment may be transmitted by PDF (portable document format) or facsimile and such PDFs or facsimiles will be deemed as sufficient as if actual signature pages had been delivered.

[*Remainder of Page Intentionally Left Blank*]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to the Securities Purchase Agreement as of the date set forth in the first paragraph hereof.

COMPANY:

HIGHPEAK ENERGY, INC.

By: /s/ Michael Hollis
Name: Michael Hollis
Title: President and CEO

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to the Securities Purchase Agreement as of the date set forth in the first paragraph hereof.

PURCHASER:

PT DANANTARA ENERGY INTERNATIONAL

By: /s/ Djamal Nasser Attamimi
Name: Djamal Nasser Attamimi
Title: Authorized Signatory

[*Signature Page – Amendment to the Securities Purchase Agreement*]

Exhibit A

CERTIFICATE OF DESIGNATION

[See Attached]

Exhibit 10.7

Execution Version

AMENDMENT TO THE

SECURITIES PURCHASE AGREEMENT

This Amendment to the Securities Purchase Agreement (this "**Amendment**") is made and entered into effective as of November 12, 2026, by and among the undersigned Purchaser (the "**Purchaser**") and HighPeak Energy, Inc. (the "**Company**"), and amends that certain Securities Purchase Agreement, dated as of October 6, 2026, by and between the Purchaser and the Company (the "**Purchase Agreement**"). Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Purchase Agreement.

RECITALS

WHEREAS, the Purchaser and the Company have agreed to amend the Purchase Agreement to (i) modify designation, election and resignation of the Series A Directors, and (ii) revise the form of the Certificate of Designation attached as Exhibit B to the Purchase Agreement.

WHEREAS, pursuant to Section 6.12 of the Purchase Agreement, any amendment to the Purchase Agreement requires the written consent of the Company and the Purchaser.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Amendment to Purchase Agreement.

(a) Section 1.2 of the Purchase Agreement is hereby amended as follows to include the text marked in blue underline as follows:

"On the terms and subject to the satisfaction or waiver (to the extent permitted by applicable Law) of the conditions set forth in this Agreement, the closing of the issuance, sale and purchase of the Purchased Shares (the "Closing") shall take place remotely via the exchange of final documents and signature pages, within ten (10) Business Days following the satisfaction or waiver of all of the conditions set forth in Article V (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver (to the extent permitted by applicable Law) of those conditions at such time), or such other time and place as the Company and Purchaser may agree; provided that the Closing shall occur no earlier than November 20, 2026. The date on which the Closing is to occur is herein referred to as the "Closing Date.""

(b) Section 4.1(c) of the Purchase Agreement is hereby amended as follows to include the text marked in blue underline as follows:

"(c) During the Nomination Period and the Additional Nomination Period (if applicable), the Company agrees to: (i) include the Purchaser Nominee(s) as a nominee for election to the Board of Directors at any annual meeting of the stockholders of the Company held for the election of directors of the Company during the Nomination Period and the Additional Nomination Period (if applicable) at which the term of office of the class of directors to which the applicable Purchaser Director or Purchaser Nominee has been assigned expires (each a "Class Election Meeting"); (ii) include the Purchaser Nominee(s) in the Company's notice of each Class Election Meeting; and (iii) recommend the election of the Purchaser Nominee(s) by the stockholders of the Company at each Class Election Meeting. For so long as the Board of Directors is divided into classes pursuant to the Certificate of Incorporation, each Purchaser Nominee (other than any Holder Designee deemed to be a Purchaser Director pursuant to Section 4.1(a) and any Purchaser Nominee who has been nominated or appointed to fill a vacancy in accordance with this Section 4.1) shall be initially assigned by the Board of Directors to the class of directors whose term expires at the next annual meeting of the stockholders of the Company. The Purchaser Nominee(s) shall comply with the corporate governance principles, confidentiality obligations and practices of the Company as in effect from time to time and applicable to directors generally, including the Company's Code of Conduct, the Company's Financial Code of Ethics and the Company's Insider Trading Policy (the "Governance Principles"). In the event that the Purchaser has the right to nominate two Purchaser Nominees and, together with its Affiliates, ceases to beneficially own (within the meaning of Rule 13d-3 under the Exchange Act) Purchased Shares issued to the Purchaser at the Closing and/or Conversion Shares collectively representing 10% or more of the outstanding shares of the Company's Common Stock, in the aggregate, which shall be determined assuming the conversion of all of the shares of Series A Preferred Stock, the Purchaser shall take all lawful action to cause one of its designated Purchaser Directors then serving on the Board of Directors to resign on or before the next annual meeting of the stockholders of the Company, which resignation may be conditioned on the acceptance thereof by the Board of Directors. If at any point during the Nomination Period (or the Additional Nomination Period), any Purchaser Director resigns from the Board (including due to failure to meet the Qualification Criteria) or is rendered unable (due to death or disability) to, or refuses to, serve on the Board for any reason, then Purchaser shall identify a replacement (who shall satisfy the Qualification Criteria) to fill the resulting vacancy caused by such Purchaser Director's departure from the Board and any such person shall be promptly appointed by the Board as a Purchaser Director. In the event that the Purchaser, together with its Affiliates, ceases to beneficially own (within the meaning of Rule 13d-3 under the Exchange Act) Purchased Shares issued to the Purchaser at the Closing and/or Conversion Shares collectively representing 5% of the outstanding shares of the Company's Common Stock, in the aggregate, which shall be determined assuming the conversion of all of the shares of Series A Preferred Stock, the Purchaser shall take all lawful action to cause each of its designated Purchaser Directors then serving on the Board of Directors to resign on or before the next annual meeting of the stockholders, which resignation may be conditioned on the acceptance thereof by the Board of Directors.

(c) The Purchase Agreement is hereby amended to add a new provision as Section 4.1(h) of the Purchase Agreement, to read as follows:

"(h) Notwithstanding anything to the contrary in this Agreement or in the Certificate of Designation, at no time shall Purchaser, its Permitted Transferees and/or any Board Rights Transferee be entitled to designate a number of directors that would exceed the number obtained by multiplying (x) the sum of (1) the then-aggregate Ownership Percentage of Purchaser, its Permitted Transferees and/or any Board Rights Transferee, as applicable, and (2) the then-aggregate Ownership Percentage of the Other Purchaser, by (y) the then-current total number of directors constituting the Board, rounded up to the nearest whole number. "Ownership Percentage" shall mean, with respect to any Person as of any date of determination, the percentage obtained by dividing (A) the aggregate number of votes that such Person is entitled to cast on the election of directors by the stockholders of the Company generally, in respect of all shares of Common Stock and Series A Preferred Stock held of record by such Person as of such date, by (B) the aggregate number of votes in the aggregate that all holders of outstanding shares of the Company's voting capital stock are entitled to cast on such matters as of such date. If the then-aggregate Ownership Percentage of Purchaser, its Permitted Transferees and/or any Board Rights Transferee is at least 10% and the application of the first sentence of this Section 4.1(h) would result in a reduction in the number of Purchaser Directors that Purchaser, its Permitted Transferees and/or any Board Rights Transferee would otherwise be entitled to nominate or designate hereunder, then, upon written notice from Purchaser, its Permitted Transferees and/or any Board Rights Transferee, within ninety (90) days of delivery of such written notice, the Boad of Directors shall increase the size of the Board of Directors by one (1) director and appoint an additional individual (who shall be an "Independent Director" under Nasdaq Rule 5605(a)(2) (or the equivalent rules of any other stock exchange on which the Company's securities are listed)) to the Board of Directors such that the limitation in the first sentence of this Section 4.1(h) is not triggered."

(d) The Purchase Agreement is hereby amended to add a new provision as Section 4.1(i) of the Purchase Agreement, to read as follows:

"(i) For so long as either the Purchaser, any of its Permitted Transferees or its Board Rights Transferee has (or has together with the Other Purchaser and its Permitted Transferees or Board Rights Transferee) the right to two Series A Directors and/or Purchaser Directors (including any Purchaser Director under the Concurrent Series A Preferred Stock Purchase Agreement), the Company shall not, without the prior consent of the Purchaser or its Board Rights Transferee, as applicable, decrease the size of the Board of Directors to fewer than nine (9) directors."

(e) Exhibit B to the Purchase Agreement is hereby amended, restated and replaced in its entirety with a new Exhibit B in the form attached as Exhibit A hereto.

2. No Other Amendments; Conflicts. No term or provision of the Purchase Agreement shall be affected by this Amendment unless specifically set forth herein, and any term or provision not affected by this Amendment shall remain in full force and effect following the date hereof. In the event of a conflict between the terms of the Purchase Agreement and the terms of this Amendment, the terms of this Amendment shall control.

3. Governing Law. This Amendment 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) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

4. Severability. Any provision hereof that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof, provided, however, that the parties will attempt in good faith to reform this Amendment in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent.

5. Counterparts. This Amendment may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and will become effective when one or more counterparts have been signed by a party and delivered to the other parties. Copies of executed counterparts of signature pages to this Amendment may be transmitted by PDF (portable document format) or facsimile and such PDFs or facsimiles will be deemed as sufficient as if actual signature pages had been delivered.

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IN WITNESS WHEREOF, the parties hereto have executed this Amendment to the Securities Purchase Agreement as of the date set forth in the first paragraph hereof.

COMPANY:

HIGHPEAK ENERGY, INC.

By: /s/ Michael Hollis
Name: Michael Hollis
Title: President and CEO

[*Signature Page – Amendment to the Securities Purchase Agreement*]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to the Securities Purchase Agreement as of the date set forth in the first paragraph hereof.

PURCHASER:

PT TUNAS HARAPAN PERKASA

By: /s/ Syailendra S. Bakrie
Name: Syailendra S. Bakrie
Title: President Director

[*Signature Page – Amendment to the Securities Purchase Agreement*]

Exhibit A

CERTIFICATE OF DESIGNATION

[See Attached]

HighPeak Energy, Inc. Completes Comprehensive Refinancing

Fort Worth, Texas, November 23, 2026 (GLOBE NEWSWIRE) **-** HighPeak Energy, Inc. ("HighPeak" or the "Company") (NASDAQ: HPK), today announced the completion of its comprehensive refinancing, creating a stronger, more flexible capital structure and significantly reducing the Company's interest expense. The refinance includes a $450 million preferred equity investment and a new senior secured reserve-based credit facility led by Citibank, N.A. and Fifth Third Bank, National Association. Proceeds from the preferred equity investment, borrowings under the new credit facility and cash on hand were used to pay off the Company's legacy $1.2 billion term loan in full (collectively, the "Refinancing").

The $450 million preferred equity investment consists of the issuance of 450,000 shares of HighPeak's newly created Series A Convertible Preferred Stock. PT Danantara Energy International, a subsidiary of PT Danantara Investment Management, purchased $250 million of the preferred stock, and PT Tunas Harapan Perkasa, a subsidiary of PT Energi Mega Persada Tbk, purchased the remaining $200 million.

In addition, HighPeak entered into a new senior secured reserve-based credit facility (the "Facility"). The Facility has an initial borrowing base of $800 million, consisting of a revolving credit facility (the "RBL") with an initial elected commitment of $750 million and a $50 million term loan facility (the "Term Loan"). In conjunction with the closing of the Refinancing, HighPeak borrowed $550 million under the RBL and $50 million under the Term Loan.

HighPeak's President and Chief Executive Officer, Michael Hollis, said "This transaction fundamentally changes the financial profile of HighPeak. By eliminating our legacy term loan and replacing it with a more efficient, lower-cost capital structure, we have substantially strengthened our balance sheet and improved our ability to generate free cash flow. Drawing $50 million less on our new RBL than originally anticipated, while still retaining approximately $50 million of cash on hand, underscores the significant progress we have made in deleveraging our balance sheet. Combined with the confidence shown by our new strategic investors and lending group, HighPeak is entering its next chapter with greater financial strength, flexibility and opportunity than at any point in our history."

About HighPeak Energy, Inc.

HighPeak Energy, Inc. is a publicly traded independent crude oil and natural gas company, headquartered in Fort Worth, Texas, focused on the acquisition, development, exploration and exploitation of unconventional crude oil and natural gas reserves in the Midland Basin in West Texas. For more information, please visit our website at www.highpeakenergy.com.

Cautionary Note Regarding Forward-Looking Statements

The information in this press release contains forward-looking statements that involve risks and uncertainties. When used in this document, the words "believes," "plans," "expects," "anticipates," "forecasts," "intends," "continue," "may," "will," "could," "should," "future," "potential," "estimate" or the negative of such terms and similar expressions as they relate to HighPeak Energy, Inc. ("HighPeak Energy" or the "Company") are intended to identify forward-looking statements, which are generally not historical in nature. The forward-looking statements are based on the Company's current expectations, assumptions, estimates and projections about the Company and the industry in which the Company operates. Although the Company believes that the expectations and assumptions reflected in the forward-looking statements are reasonable as and when made, they involve risks and uncertainties that are difficult to predict and, in many cases, beyond the Company's control.

Investor Contact:
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Source: HighPeak Energy, Inc.