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)
June 17, 2020

SM Energy Company
(Exact name of registrant as specified in its charter)

Delaware	**001-31539**	**41-0518430**
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

1775 Sherman Street, Suite 1200 **Denver, Colorado** (Address of principal executive offices)	**80203** (Zip Code)

Registrant's telephone number, including area code: **(303) 861-8140**

Not applicable
(Former name or former address, if changed since last report.)

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

☐ 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, $0.01 par value	**SM**	**New York Stock Exchange**

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. ☐

Item 1.01 Entry Into a Material Definitive Agreement.

As previously disclosed, SM Energy Company (the "Company") conducted offers to exchange (the "Exchange Offers") its outstanding senior unsecured notes (the "Old Notes") for up to $532.9 million of newly issued 10% Senior Secured Second Lien Notes (the "Second Lien Notes") and a concurrent solicitation of consents to amend the indentures governing the Old Notes. On June 17, 2020, at the closing of the Exchange Offers and the transactions contemplated by the previously announced exchange agreement (the "Private Exchange Agreement") entered into by the Company with certain holders (the "Backstop Group") of the Old Notes and the Company's 1.5% Convertible Notes due 2021 (the "2021 Notes"), the Company exchanged the amounts of Old Notes and the 2021 Notes set forth in the table below for $446,675,000 in Second Lien Notes. The Company also issued warrants to the Backstop Group to acquire up to 5% of its outstanding common stock (subject to certain conditions discussed below) and, in accordance with the Private Exchange Agreement, paid to the members of the Backstop Group who exchanged 2021 Notes cash in the aggregate amount of approximately $53.5 million.

Title of Notes Exchanged	Principal Amount of Notes Exchanged
1.5% Convertible Notes due 2021	$107,015,000
6.125% Senior Notes due November 15, 2022	$141,701,000
5.000% Senior Notes due January 15, 2024	$155,339,000
5.625% Senior Notes due June 1, 2025	$150,882,000
6.75% Senior Notes due September 15, 2026	$80,765,000
6.625% Senior Notes due January 15, 2027	$83,209,000
Total Principal Amount of Notes Exchanged:	$718,911,000

Second Lien Notes Indenture

On June 17, 2020, the Company issued $446,675,000 aggregate principal amount of Second Lien Notes in private placements (a) under Rule 144A under the Securities Act of 1933, as amended (the "Securities Act") and (b) to persons outside of the United States in compliance with Regulation S under the Securities Act. The Second Lien Notes have not been registered under the Securities Act or any state securities laws and may not be offered or sold in the United States absent an effective registration statement or an applicable exemption from registration requirements, or in a transaction not subject to the registration requirements of the Securities Act or any state securities laws.

The Second Lien Notes were issued pursuant to an Indenture, dated as of June 17, 2020 (the "Second Lien Notes Indenture"), between the Company and UMB Bank, N.A., as trustee (in such capacity, the "Trustee"). The Second Lien Notes will mature on January 15, 2025. Interest on the Second Lien Notes will accrue at 10.0% per annum and will be paid semi-annually, in arrears, on January 15 and July 15 of each year, beginning July 15, 2020.

The Second Lien Notes are senior obligations of the Company secured on a second-priority basis and rank (a) effectively junior to the Company's obligations under its senior secured credit agreement, which is secured on a first-priority basis by a lien on the same collateral that secures the Second Lien Notes, (b) effectively pari passu with the 2021 Notes that remain outstanding after the consummation of the Private Exchange Offer, which are secured on a second priority basis by a lien on the same collateral that secures the Second Lien Notes, (c) effectively senior to the Company's existing and future unsecured indebtedness, including any Old Notes that remain outstanding after the consummation of the Exchange Offers and of the transaction contemplated by the Private Exchange Agreement, (d) effectively senior to all future junior lien obligations of the Company, (e) effectively junior to all existing and future secured indebtedness of the Company secured by assets not constituting collateral under the Second Lien Notes, to the extent of the value of such assets, (f) pari passu in right of payment with all of the Company's existing and future senior debt, (g) structurally subordinated to all existing and future indebtedness of any non-guarantor subsidiaries, and (h) senior to any existing or future subordinated debt of the Company.

At any time prior to June 17, 2022, the Company may on any one or more occasions, upon not less than 30 nor more than 60 days' notice, redeem (i) all or a part of the Second Lien Notes at a redemption price equal to 100% of the principal amount of the Second Lien Notes redeemed, plus a make-whole premium, plus accrued and unpaid interest to the applicable redemption date or (ii) with the net cash proceeds of certain equity offerings, up to 35% of the aggregate principal amount of the Second Lien Notes, at a redemption price equal to 110.0% of the principal amount of the Second Lien Notes redeemed, plus accrued and unpaid interest, if any, to the redemption date, so long as (a) at least 65% of the original principal amount of the Second Lien Notes issued on June 17, 2020 remains outstanding after each such redemption and (b) the redemption occurs within 180 days after the closing of the related equity offering.

On and after June 17, 2022, the Company may on one or more occasions redeem all or a portion of the Second Lien Notes, upon not less than 30 nor more than 60 days' notice, at redemption prices (expressed as percentages of the principal amount) equal to (i) 107.5% for the twelve-month period beginning on June 17, 2022; (ii) 105.0% for the twelve-month period beginning on June 17, 2023; and (iii) 100% on June 17, 2024 and at any time thereafter, plus accrued and unpaid interest to the applicable redemption date.

The Second Lien Notes Indenture restricts the Company's ability and the ability of certain of its subsidiaries to: (i) incur additional debt; (ii) pay certain dividends or distributions on the Company's capital stock or purchase, redeem or retire such capital stock; (iii) sell assets, including the capital stock of the Company's Restricted Subsidiaries (as defined in the Second Lien Notes Indenture); (iv) with respect to the Company's Restricted Subsidiaries, permit the consensual restriction on the ability of such Restricted subsidiaries to pay dividends or indebtedness owing to the Company or to any other Restricted Subsidiaries; (v) create liens that secure debt; (vi) enter into transactions with affiliates; and (vii) merge or consolidate with another company. These covenants are subject to important exceptions and qualifications. At any time when the Second Lien Notes are rated investment grade by both Moody's Investors Service, Inc. and S&P Global Ratings, Inc., many of these covenants will terminate, although if such ratings subsequently decline to below investment grade, such covenants will be reinstated.

The Second Lien Notes Indenture provides that each of the following is an event of default (each, an "Event of Default"): (i) default in the payment of interest on the Second Lien Notes when due, that continues for 30 days; (ii) default in the payment of the principal of or premium, if any, on the Second Lien Notes when due; (iii) failure by the Company or any Subsidiary Guarantor (as defined in the Second Lien Notes Indenture), if any, to comply with certain covenants relating to merger and consolidation; (iv) failure by the Company to comply for 30 days after notice (or 180 days after notice in the case of a failure to comply with certain covenants relating to the filing of annual, quarterly and current reports with the Securities and Exchange Commission) with the covenants described in clauses (i) through (vi) of the immediately preceding paragraph, or with covenants in the Second Lien Notes that require that (a) any Restricted Subsidiaries of the Company that guarantee other debt of the Company to also guarantee the debt of the Company under the Second Lien Notes Indenture, (b) the Company engage only in the oil and gas business except for other business activities that are not material to the Company and its Restricted Subsidiaries taken as a whole, and (c) upon a change of control of the Company, the Company offer to repurchase all or any part of the Second Lien Notes at 101% of their principal amount, plus accrued and unpaid interest; (v) failure by the Company to comply for 60 days after notice with any of the other agreements of the Company in the Second Lien Notes Indenture; (vi) default under any mortgage, indenture or instrument under which there is issued or by which there is secured or evidenced any indebtedness for money borrowed by the Company or any of its Restricted Subsidiaries (or the payment of which is guaranteed by the Company or any of its Restricted Subsidiaries) if that default: (a) is caused by a failure to pay principal of, or interest or premium, if any, on such indebtedness prior to the expiration of the grace period provided in such indebtedness (a "Payment Default"); or (b) results in the acceleration of such indebtedness prior to its stated maturity, and, in each case, the principal amount of any such indebtedness, together with the principal amount of any other such indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates $50.0 million or more; (vii) certain events of bankruptcy, insolvency or reorganization described in the Second Lien Notes Indenture with respect to the Company or any of the Company's Restricted Subsidiaries that is a Significant Subsidiary (as defined in the Second Lien Notes Indenture) of the Company or any group of the Company's Restricted Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary of the Company; (viii) failure by the Company, or any of the Company's Restricted Subsidiaries that is a Significant Subsidiary of the Company or any Significant Subsidiary or any group of the Company's Restricted Subsidiaries that, together, would constitute a Significant Subsidiary of the Company, to pay final judgments aggregating in excess of $50.0 million, to the extent not covered by insurance, which any judgments are not paid, discharged or stayed for a period of 60 consecutive days following entry of such judgment, during which a stay of enforcement of such final judgment, by reason of pending appeal or otherwise, is not in effect; (ix) any future subsidiary guarantee entered into by a Significant Subsidiary of the Company or group of the Company's Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, ceases to be in full force and effect (except as contemplated by the Second Lien Notes Indenture) or is declared null and void in any judicial proceeding, or any Subsidiary Guarantor that is a Significant Subsidiary or group of Subsidiary Guarantors that, taken together, would constitute a Significant Subsidiary, denies or disaffirms its obligations under the Second Lien Notes Indenture or such future subsidiary guarantee of the Second Lien Notes; and (x) the occurrence of any of the following: (a) except as permitted by the Note Documents (as defined in the Second Lien Notes Indenture), any Note Document establishing the Parity Liens (as defined in the Second Lien Notes Indenture, which definition includes the liens securing the Second Lien Notes) ceases for any reason to be enforceable, which Parity Liens are granted on collateral having a fair market value in the aggregate of more than $50.0 million; provided, however, that if such failure is susceptible to cure, no Event of Default will arise with respect to such failure until 30 days after any officer of the Company or any Restricted Subsidiary becomes aware of such failure, which failure has not been cured during such time period; (b) except as permitted by the Note Documents, any Parity Lien purported to be granted under any Note Document on collateral having in the aggregate a fair market value in excess of $50.0 million, ceases to be an enforceable and perfected second-priority Lien, subject to the Intercreditor Agreement (as defined below) and Permitted Liens (as defined in the Second Lien Notes Indenture); provided that if such failure is susceptible to cure, no Event of Default will arise with respect to such failure until 30 days after any officer of the Company or any Restricted Subsidiary becomes aware of such failure, which failure has not been cured during such time period; and (c) the Company or any Subsidiary Guarantor, or any person validly acting on behalf of any of them, denies or disaffirms, in writing, any obligation of the Company or any Subsidiary Guarantor set forth in or arising under any Note Document establishing Parity Liens.

In the case of an Event of Default arising from certain events of bankruptcy, insolvency or reorganization described above, all outstanding principal of, premium, if any, and accrued interest on the Second Lien Notes will become due and payable immediately without further action or notice. If any other Event of Default occurs and is continuing, the Trustee or the holders of at least 25% in aggregate principal amount of the then outstanding Second Lien Notes may declare all unpaid principal of, premium, if any, and accrued interest on the Second Lien Notes to be due and payable immediately.

If the Second Lien Notes are accelerated or otherwise become due prior to their stated maturity, in each case, as a result of an Event of Default, the applicable premium or the amount by which the applicable redemption price exceeds the principal amount of the Second Lien Notes (the "Redemption Price Premium"), as applicable, with respect to an optional redemption of the Second Lien Notes will also be due and payable as though the Second Lien Notes had been optionally redeemed on the date of

such acceleration. If the applicable premium or the Redemption Price Premium, as applicable, becomes due and payable, it will be deemed to be principal of the Second Lien Notes and interest shall accrue on the full principal amount of the Second Lien Notes (including the applicable premium or the Redemption Price Premium, as applicable) from and after the applicable triggering event. The premium will also be payable if the Second Lien Notes or the Second Lien Notes Indenture are satisfied, released or discharged through foreclosure, whether by judicial proceeding, deed in lieu of foreclosure or by any other means.

A copy of the Second Lien Notes Indenture is filed herewith as Exhibit 4.1, and is incorporated herein by reference. The foregoing description of the Second Lien Notes Indenture does not purport to be complete and is qualified in its entirety by reference to such exhibit.

Intercreditor Agreement, Collateral Trust Agreement and Security Agreements

On June 17, 2020, the Company, Wells Fargo Bank, National Association, as priority lien agent, and UMB Bank, N.A., as second lien collateral trustee, entered into an intercreditor agreement (the "Intercreditor Agreement") that governs the relationship between the lenders under the Company's senior secured credit agreement, on the one hand, and holders of the Second Lien Notes, on the other hand, with respect to collateral and certain other matters. Additionally, on June 17, 2020, the Company entered into a Second Lien Pledge and Security Agreement (the "Second Lien Security Agreement") and a Second Lien Security Agreement (the "Second Lien Accounts Security Agreement"), in each case, with UMB Bank, N.A., as collateral trustee, relating to certain collateral matters. On June 17, 2020, the Company, the Trustee and UMB Bank, N.A., as collateral trustee, (and, by a joinder, U.S. Bank National Association, as trustee under the indenture governing the Company's 2021 Notes (the "2021 Notes Indenture")) entered into a Collateral Trust Agreement (the "Collateral Trust Agreement") that governs the relationship of the Parity Lien Secured Parties (as defined in the Collateral Trust Agreement) with respect to collateral and certain other matters.

Copies of the Intercreditor Agreement, Second Lien Security Agreement, Second Lien Accounts Security Agreement, and Collateral Trust Agreement are filed herewith as Exhibits 10.1, 10.2, 10.3, and 10.4, respectively, and are incorporated herein by reference. The foregoing summaries of these agreements do not purport to be complete and are qualified in their entirety by reference to the text of the agreements.

Warrant Agreement

In connection with the consummation of the private exchange with members of the Backstop Group pursuant to the Private Exchange Agreement, the Company issued warrants (the "Warrants") to members of the Backstop Group to purchase 5,941,304 shares of the Company's common stock, par value $0.01 per share ("Common Stock"). The Warrants are exercisable at any time after the Triggering Date (as defined below) and prior to June 30, 2023 at an exercise price of $0.01 per share. The Warrants will become exercisable upon the occurrence of the Triggering Date, which is the first Trading Day following five consecutive trading days on which the product of the number of shares of Common Stock issued and outstanding on four of the five trading days, multiplied by the closing price per share of Common Stock for each such trading day, is at least $1.0 billion.

A copy of the Warrant Agreement is filed herewith as Exhibit 4.2, and is incorporated herein by reference. The foregoing description of the Warrant Agreement does not purport to be complete and is qualified in its entirety by reference to such Exhibit.

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

The information provided in Item 1.01 is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The information provided in Item 1.01 is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description
4.1	Indenture dated as of June 17, 2020, between SM Energy Company and UMB Bank, N.A., as trustee
4.2	Warrant Agreement dated as of June 17, 2020, among SM Energy Company and Computershare Inc. and Computershare Trust Company, N.A.
10.1	Intercreditor Agreement dated as of June 17, 2020 among SM Energy Company, Wells Fargo Bank, National Association, and UMB Bank, N.A.
10.2	Second Lien Pledge and Security Agreement dated as of June 17, 2020 between SM Energy Company and UMB Bank, N.A., as collateral trustee
10.3	Second Lien Security Agreement dated as of June 17, 2020 between SM Energy Company and UMB Bank, N.A., as collateral trustee
10.4	Collateral Trust Agreement dated as of June 17, 2020 among SM Energy Company, UMB Bank, N.A., as trustee, UMB Bank, N.A., as collateral trustee, and (by joinder) U.S. Bank National Association, as trustee under the 2021 Notes Indenture
104	Cover Page Interactive Data File (formatted as Inline XBRL and included as Exhibit 101)

SIGNATURES

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

SM ENERGY COMPANY

Date: June 17, 2020

By: /s/ DAVID W. COPELAND
David W. Copeland
Executive Vice President, General Counsel, and Corporate Secretary

EXHIBIT 4.1

Execution Version

SM Energy Company, as Issuer

and

UMB Bank, N.A., as Trustee

INDENTURE

Dated as of June 17, 2020

10.00% Senior Secured Notes due 2025

Reference is made to the Intercreditor Agreement, dated as of June 17, 2020, between Wells Fargo Bank, N.A., as Priority Lien Agent (as defined therein), and UMB Bank, N.A., as Second Lien Collateral Trustee (as defined therein), among others, and acknowledged and agreed by SM Energy Company (as amended, supplemented, amended and restated or otherwise modified and in effect from time to time, the "Intercreditor Agreement"). Each holder of any Second Lien Obligations (as defined in the Intercreditor Agreement), by its acceptance of such Second Lien Obligations (i) agrees that all Parity Lien Obligations will be and are secured equally and ratably by all Parity Liens at any time granted by the Company or any Subsidiary Guarantor to secure any Notes Obligations, whether or not upon property otherwise constituting collateral for the Notes Obligations, and that all such Parity Liens will be enforceable by the Collateral Trustee for the benefit of all holders of Parity Lien Obligations equally and ratably, (ii) further agrees that the holders of Notes Obligations are bound by the provisions of the Collateral Trust Agreement and the Intercreditor Agreement, including the provisions relating to the ranking of Parity Liens and the order of application of proceeds from the enforcement of Parity Liens and (iii) consents and directs the Collateral Trustee to perform its obligations under the Collateral Trust Agreement, the Intercreditor Agreement and the other Security Documents establishing Parity Liens. The foregoing provisions are intended as an inducement to the lenders under the Priority Lien Documents (as defined in the Intercreditor Agreement) to extend credit to SM Energy Company, and such lenders are intended third party beneficiaries of such provisions and the provisions of the Intercreditor Agreement.

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EXHIBITS

INDENTURE (this "Indenture"), dated as of June 17, 2020, by and between SM Energy Company, a Delaware corporation (the "Company"), and UMB Bank, N.A., as trustee (the "Trustee").

The Company and the Trustee agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders (as defined below) of the Company's 10.00% Senior Secured Notes due 2025 (the "Notes"):

RECITALS

The Company has duly authorized the issuance of the Notes up to such principal amount or amounts as may from time to time be authorized in accordance with the terms of this Indenture and to provide, among other things, for the authentication, delivery and administration thereof, the Company has duly authorized its execution and delivery of this Indenture. The Company has done all things necessary to make the Notes, when executed by the Company and authenticated and delivered hereunder and duly issued by the Company, the valid obligations of the Company. The Company has done all things necessary to make this Indenture a valid agreement of the Company in accordance with its terms.

ARTICLE ONE
[RESERVED.]

ARTICLE TWO
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 2.01. Definitions.

"144A Global Note" means a Global Note substantially in the form of Exhibit A hereto bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the Depositary or its nominee that shall be issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 144A.

"Acquired Indebtedness" means Indebtedness (i) of a Person or any of its Subsidiaries existing at the time such Person becomes or is merged with and into a Restricted Subsidiary or (ii) assumed in connection with the acquisition of assets from such Person, in each case whether or not Incurred by such Person in connection with, or in anticipation or contemplation of, such Person becoming a Restricted Subsidiary or such acquisition. Acquired Indebtedness shall be deemed to have been Incurred, with respect to clause (i) of the preceding sentence, on the date such Person becomes or is merged with and into a Restricted Subsidiary and, with respect to clause (ii) of the preceding sentence, on the date of consummation of such acquisition of assets.

"Act of Parity Lien Debtholders" means, as to any matter at any time, a direction in writing delivered to the Collateral Trustee by, or with the written consent of, the holders of Parity Lien Debt representing the Required Parity Lien Debtholders.

"Additional Assets" means:

(1) any properties or assets to be used by the Company or a Restricted Subsidiary in the Oil and Gas Business;

(2) the Capital Stock of a Person that becomes a Restricted Subsidiary as a result of the acquisition of such Capital Stock by the Company or a Restricted Subsidiary; or

(3) Capital Stock constituting a minority interest in any Person that at such time is a Restricted Subsidiary;

provided, however, that, in the case of clauses (2) and (3), such Restricted Subsidiary is primarily engaged in the Oil and Gas Business.

"Additional Notes" means any further Notes (other than the Initial Notes) issued under this Indenture in accordance with the terms of this Indenture, including Sections 3.01(e), 3.02, 3.15 and 5.07, as part of the same series as the Initial Notes, ranking equally with those Initial Notes and having identical terms to the Initial Notes (except that there may be differences in (a) the date of issuance, (b) the issue price, (c) at the option of the Company, as to the payment of interest accruing prior to the issue date of such Additional Notes, and (d) the first payment of interest following the issue date of such Additional Notes), subject to compliance with Article Three. The Initial Notes and any Additional Notes subsequently issued under this Indenture shall be treated as a single class of securities for all purposes under this Indenture, including, without limitation, directions, waivers, amendments, consents, redemptions and offers to purchase.

"Additional Secured Debt Designation" has the meaning assigned to such term in the Collateral Trust Agreement.

"Adjusted Consolidated Net Tangible Assets" of the Company means (without duplication), as of the date of determination, the remainder of:

(a) the sum of:

(i) discounted future net revenues from proved oil and gas reserves of the Company and its Restricted Subsidiaries calculated in accordance with SEC guidelines before any state or federal income taxes, as estimated by the Company in a reserve report prepared as of the end of the Company's most recently completed fiscal year or, at the Company's option, fiscal quarter, for which audited financial statements are available, as increased by, as of the date of determination, the estimated discounted future net revenues from:

(A) estimated proved oil and gas reserves acquired since such year end or quarter end, which reserves were not reflected in such year end or quarter end reserve report, and

(B) estimated oil and gas reserves attributable to extensions, discoveries and other additions and upward revisions of estimates of proved oil and gas reserves since such year end or quarter end due to exploration, development or exploitation, production or other activities, which would, in accordance with standard industry practice, cause such revisions (including the impact to proved reserves and future net revenues from estimated development costs incurred and the accretion of discount since such year end or quarter end),

and decreased by, as of the date of determination, the estimated discounted future net revenues from:

(C) estimated proved oil and gas reserves produced or disposed of since such year end or quarter end, and

(D) estimated oil and gas reserves attributable to downward revisions of estimates of proved oil and gas reserves since such year end or quarter end due to changes in geological conditions or other factors which would, in accordance with standard industry practice, cause such revisions, in each case calculated on a pre-tax basis and in accordance with SEC guidelines,

in the case of clauses (A) through (D) utilizing prices and costs calculated in accordance with SEC guidelines as of such year end or quarter end; *provided*, *however*, that in the case of each of the determinations made pursuant to clauses (A) through (D), such increases and decreases shall be as estimated by the Company's petroleum engineers;

(ii) the capitalized costs that are attributable to Oil and Gas Properties of the Company and its Restricted Subsidiaries to which no proved oil and gas reserves are attributable, based on the Company's books and records as of a date no earlier than the date of the Company's latest available annual or quarterly financial statements;

(iii) the Net Working Capital of the Company and its Restricted Subsidiaries on a date no earlier than the date of the Company's latest annual or quarterly financial statements; and

(iv) the greater of:

(A) the net book value of other tangible assets of the Company and its Restricted Subsidiaries, as of a date no earlier than the date of the Company's latest annual or quarterly financial statements, and

(B) the appraised value, as estimated by independent appraisers, of other tangible assets of the Company and its Restricted

Subsidiaries, as of a date no earlier than the date of the Company's latest audited financial statements; *provided* that, if no such appraisal has been performed the Company shall not be required to obtain such an appraisal and only clause (iv)(A) of this definition shall apply;

minus

(b) the sum of:

(i) Minority Interests;

(ii) any net gas balancing liabilities of the Company and its Restricted Subsidiaries reflected in the Company's latest annual or quarterly balance sheet (to the extent not deducted in calculating Net Working Capital of the Company in accordance with clause (a)(iii) above of this definition);

(iii) to the extent included in (a)(i) above, the discounted future net revenues, calculated in accordance with SEC guidelines (utilizing prices and costs calculated in accordance with SEC guidelines as of such year end or quarter end), attributable to reserves which are required to be delivered to third parties to fully satisfy the obligations of the Company and its Restricted Subsidiaries with respect to Volumetric Production Payments (determined, if applicable, using the schedules specified with respect thereto), other than any such obligation under the Existing Net Profits Plan; and

(iv) to the extent included in (a)(i) above, the discounted future net revenues, calculated in accordance with SEC guidelines, attributable to reserves subject to Dollar-Denominated Production Payments (other than under the Existing Net Profits Plan) which, based on the estimates of production and price assumptions included in determining the discounted future net revenues specified in (a)(i) above, would be necessary to fully satisfy the payment obligations of the Company and its Subsidiaries with respect to such Dollar-Denominated Production Payments (determined, if applicable, using the schedules specified with respect thereto).

If the Company changes its method of accounting from the successful efforts method of accounting to the full cost or a similar method, "Adjusted Consolidated Net Tangible Assets" will continue to be calculated as if the Company were still using the successful efforts method of accounting.

"Affiliate" of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agent" means any Registrar or Paying Agent.

"Applicable Premium" means, with respect to any Note on any redemption date, the greater of:

(1) 1.0% of the principal amount of the Note; and

(2) the excess of:

(a) the present value at such redemption date of (i) the redemption price of the Note at June 17, 2022, (such redemption price being set forth in the table appearing in Section 4.07(c) of this Indenture) plus (ii) all required interest payments due on the Note through June 17, 2022, (excluding accrued but unpaid interest to the redemption date), computed using a discount rate equal to the Treasury Rate as of such redemption date plus 50 basis points; over

(b) the principal amount of the Note.

"Applicable Procedures" means, with respect to any transfer or exchange of or for beneficial interests in any Global Note, the rules and procedures of the Depositary, Euroclear and Clearstream that apply to such transfer or exchange.

"Asset Disposition" means any direct or indirect sale, lease (including by means of Production Payments and Reserve Sales and a Sale/Leaseback Transaction) (other than an operating lease entered into in the ordinary course of the Oil and Gas Business), transfer, issuance or other disposition, or a series of related sales, leases, transfers, issuances or dispositions that are part of a common plan, of (A) shares of Capital Stock of a Restricted Subsidiary (other than Preferred Stock of Restricted Subsidiaries issued in compliance with Section 5.07 and directors' qualifying shares or shares required by applicable Legal Requirements to be held by a Person other than the Company or a Restricted Subsidiary), (B) all or substantially all the assets of any division or line of business of the Company or any Restricted Subsidiary (excluding any division or line of business the assets of which are owned by an Unrestricted Subsidiary) or (C) any other assets of the Company or any Restricted Subsidiary outside the ordinary course of business of the Company or such Restricted Subsidiary (each referred to for the purposes of this definition as a "disposition"), in each case by the Company or any of its Restricted Subsidiaries, including any disposition by means of a merger, consolidation or similar transaction.

Notwithstanding the preceding, the following items shall not be deemed to be Asset Dispositions:

(1) a disposition by a Restricted Subsidiary to the Company or by the Company or a Restricted Subsidiary to a Restricted Subsidiary;

(2) a disposition of cash, Cash Equivalents or other financial assets in the ordinary course of business;

(3) a disposition of Hydrocarbons or mineral products inventory in the ordinary course of business;

(4) a disposition of damaged, unserviceable, obsolete or worn out equipment or equipment that is no longer necessary for the proper conduct of the business of the Company and its Restricted Subsidiaries and that is disposed of in each case in the ordinary course of business;

(5) transactions in accordance with Article Six;

(6) an issuance of Capital Stock by a Restricted Subsidiary to the Company or to a Restricted Subsidiary;

(7) the making of a Permitted Investment or a Restricted Payment (or a disposition that would constitute a Restricted Payment but for the exclusions from the definition thereof) permitted by Section 5.08;

(8) an Asset Swap;

(9) dispositions of assets with a Fair Market Value of less than $10.0 million in any single transaction or series of related transactions;

(10) Permitted Liens and dispositions in connection therewith or as a result thereof;

(11) dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements;

(12) the licensing or sublicensing of intellectual property (including, without limitation, the licensing of seismic data) or other general intangibles and licenses, leases or subleases of other property in the ordinary course of business which do not materially interfere with the business of the Company and its Restricted Subsidiaries;

(13) foreclosure on assets;

(14) any Production Payments and Reserve Sales; *provided* that any such Production Payments and Reserve Sales, other than incentive compensation programs on terms that are reasonably customary in the Oil and Gas Business for geologists, geophysicists and other providers of technical services to the Company or a Restricted Subsidiary, shall have been created, Incurred, issued, assumed or Guaranteed in connection with the financing of, and within 60 days after the acquisition of, the property that is subject thereto;

(15) surrender or waiver of contract rights, oil and gas leases, or the settlement, release or surrender of contract, tort or other claims of any kind;

(16) the abandonment, farm-out, lease or sublease or other disposition of developed or undeveloped Oil and Gas Properties in the ordinary course of business, including pursuant to any agreement or arrangement described in the definition of Permitted Business Investment; and

(17) a disposition (whether or not in the ordinary course of business) of any Oil and Gas Property or interest therein to which no proved reserves are attributable at the time of such disposition.

"Asset Swap" means any substantially contemporaneous (and in any event occurring within 180 days of each other) purchase and sale or exchange of any oil or natural gas properties or assets or interests therein between the Company or any of its Restricted Subsidiaries and another Person; *provided*, *however*, that any cash received must be applied in accordance with Section 5.11 as if the Asset Swap were an Asset Disposition.

"Average Life" means, as of the date of determination, with respect to any Indebtedness or Preferred Stock, the quotient obtained by dividing (1) the sum of the products of the numbers of years from the date of determination to the dates of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Preferred Stock multiplied by the amount of such payment by (2) the sum of all such payments.

"Bank Product" means each and any of the following bank services provided to the Company or any Subsidiary Guarantor or any of their respective subsidiaries by any holder of Priority Lien Debt or any Affiliate thereof: (a) commercial and corporate credit cards or debit cards, (b) purchase cards, (c) stored value cards, (d) Treasury Management Arrangements (including, without limitation, overdraft, depository, controlled disbursement, electronic funds transfer, automated clearinghouse transactions, return items, overdrafts and interstate depository network services) and (e) all other similar products as described in the definition of the term "Bank Product" in any Refinancing Credit Facility.

"Bank Product Obligations" means any and all obligations of the Company or any Subsidiary Guarantor, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), in connection with any Bank Product.

"Bankruptcy Code" means Title 11 of the United States Code.

"Bankruptcy Law" means the Bankruptcy Code and any similar federal, state or foreign law for the relief of debtors.

"Beneficial Owner" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" will be deemed to have beneficial ownership of all securities that such "person" has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only after the passage of time. The terms "Beneficially Owns" and "Beneficially Owned" have a corresponding meaning.

"Board of Directors" means, as to any Person that is a corporation, the board of directors of such Person or any duly authorized committee thereof or as to any Person that is not a corporation, the board of managers or such other individual or group serving a similar function.

"Board Resolution" means, with respect to a Board of Directors, a copy of a resolution certified by the Secretary or an Assistant Secretary of the Person or, in the case of a Person that is a partnership that has no such officers, the Secretary or an Assistant Secretary of a general partner of such Person, to have been duly adopted by such Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"Borrowing Base" means, with respect to borrowings under the Senior Secured Credit Agreement and any amendment to and/or modification or replacement of the foregoing in the form of a reserve-based borrowing base credit facility, having a lender group that includes one or more commercial financial institutions which engage in oil and gas reserve based lending in the ordinary course of their respective businesses, the maximum amount determined or re-determined by the lenders thereunder as the aggregate lending value to be ascribed to the Oil and Gas Properties and other assets of the Company and its Restricted Subsidiaries against which such lenders are prepared to provide loans, letters of credit or other Indebtedness to the credit parties, using customary practices and standards for determining reserve-based borrowing base loans and which are generally applied to borrowers in the Oil and Gas Business by commercial lenders, as determined semi-annually during each year and/or on such other occasions as may be required or provided for therein.

"Business Day" means each day that is not a Saturday, Sunday or other day on which banking institutions in Houston, Texas, Charlotte, North Carolina, Denver, Colorado or New York, New York are authorized or required by law to close.

"Capital Stock" of any Person means any and all shares, units, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including any Preferred Stock, but excluding any debt securities convertible into, or exchangeable for, such equity.

"Capitalized Lease Obligation" means an obligation that is required to be classified and accounted for as a capitalized lease for financial reporting purposes in accordance with GAAP, and the amount of Indebtedness represented by such obligation will be the capitalized amount of such obligation at the time any determination thereof is to be made as determined in accordance with GAAP, and the Stated Maturity thereof will be the date of the last payment of rent or any other amount due under such lease prior to the first date such lease may be terminated without penalty. Notwithstanding the foregoing, any lease (whether entered into before or after the Issue Date) that would have been classified as an operating lease pursuant to GAAP as in effect prior to the effective date of Financial Accounting Standards Board's Accounting Standards Codification No. 842 (Leases), will be deemed not to represent a Capitalized Lease Obligation.

"Cash Equivalents" means:

(1) securities issued or directly and fully guaranteed or insured by the United States Government or any agency or instrumentality of the United States (provided that the full faith and credit of the United States is pledged in support thereof), having maturities of not more than one year from the date of acquisition;

(2) marketable general obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition and, at the time of acquisition, having a credit rating of "A" (or the equivalent thereof) or better from either S&P or Moody's;

(3) certificates of deposit, time deposits, eurodollar time deposits, overnight bank deposits or bankers' acceptances having maturities of not more than one year from the date of acquisition thereof issued by any commercial bank the short-term deposit of which is rated at the time of acquisition thereof at least "A2" or the equivalent thereof by S&P, or "P-2" or the equivalent thereof by Moody's, and having combined capital and surplus in excess of $100.0 million;

(4) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (1), (2) and (3) entered into with any bank meeting the qualifications specified in clause (3) above;

(5) commercial paper rated at the time of acquisition thereof at least "A-2" or the equivalent thereof by S&P or "P-2" or the equivalent thereof by Moody's, or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named Rating Agencies cease publishing ratings of investments, and in any case maturing within one year after the date of acquisition thereof; and

(6) interests in any investment company or money market fund which invests 95% or more of its assets in instruments of the type specified in clauses (1) through (5) above.

"Change of Control" means the occurrence of any of the following events:

(1) any "person" or "group" of related persons (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), is or becomes the Beneficial Owner, directly or indirectly, of more than 50% of the total voting power of the Voting Stock of the Company (or its successor by merger, consolidation or purchase of all or substantially all of its assets) other than as a result of any merger or consolidation in which the holders of the Voting Stock of the Company immediately prior to such transaction will, immediately after such transaction, hold or own Voting Stock of the surviving or successor entity or any parent thereof representing a majority of the voting power of the Voting Stock of such entity (for the purposes of this clause (1), such person or group shall be deemed to Beneficially Own any Voting Stock of the Company held by a parent entity, if such person or group Beneficially Owns, directly or indirectly, more than 50% of the total voting power of the Voting Stock of such parent entity);

(2) the sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the assets of the Company and its Restricted Subsidiaries taken as a whole to any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act); or

(3) the adoption by the stockholders of the Company of a plan or proposal for the liquidation or dissolution of the Company.

"Change of Control Triggering Event" means the occurrence of a Change of Control that is accompanied or followed by a downgrade by one or more gradations (including gradations within ratings categories as well as between ratings categories) or withdrawal of the rating of the Notes within the Ratings Decline Period by either of the Rating Agencies, as a result of which the rating of the Notes by such Rating Agency on any day during such Ratings Decline Period is below the rating by such Rating Agency in effect immediately preceding the first public announcement of the Change of Control (or occurrence thereof if such Change of Control occurs prior to public announcement).

"Clearstream" means Clearstream Banking, société anonyme, Luxembourg, and its successors.

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

"Collateral" means all assets and Property, whether real, personal or mixed, wherever located and whether now owned or at any time acquired after the Issue Date by the Company or any Subsidiary Guarantor, as to which a Lien is granted or purported to be granted under the Security Documents to secure the Parity Lien Obligations; *provided* that the Collateral does not include any Excluded Assets.

"Collateral Trust Agreement" means the Collateral Trust Agreement, dated as of June 17, 2020 among the Company, each Subsidiary Guarantor from time to time party thereto, the Collateral Trustee, each other Parity Lien Representative from time to time party thereto and the Trustee, as may be amended, supplemented or otherwise modified from time to time.

"Collateral Trustee" means the collateral trustee for all holders of Parity Lien Obligations pursuant to the Collateral Trust Agreement. UMB Bank, N.A. will initially serve as the Collateral Trustee.

"Commodity Agreements" means, in respect of any Person, any forward contract, commodity swap agreement, commodity option agreement or other similar agreement or arrangement in respect of Hydrocarbons used, produced, processed or sold by such Person that are customary in the Oil and Gas Business and designed to protect such Person against fluctuation in Hydrocarbon prices.

"Common Stock" means, with respect to any Person, any and all shares, interests or other participations in, and other equivalents (however designated and whether voting or nonvoting) of such Person's common stock whether or not outstanding on the Issue Date, and includes, without limitation, all series and classes of such common stock.

"Company" means SM Energy Company, a Delaware corporation, until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Company" shall mean such successor Person.

"Consolidated Coverage Ratio" means as of any date of determination, the ratio of (x) the aggregate amount of Consolidated EBITDAX of such Person for the period of the most recent

four consecutive fiscal quarters ending prior to the date of such determination for which financial statements are in existence to (y) Consolidated Interest Expense for such four fiscal quarters, provided, however, that:

(1) if the transaction giving rise to the need to calculate the Consolidated Coverage Ratio is an Incurrence of Indebtedness, Consolidated EBITDAX and Consolidated Interest Expense for such period will be calculated after giving effect on a pro forma basis to such Indebtedness and the use of proceeds thereof as if such Indebtedness had been Incurred on the first day of such period and such proceeds had been applied as of such date;

(2) if the Company or any Restricted Subsidiary has Incurred, repaid, repurchased, defeased or otherwise discharged any Indebtedness (other than Indebtedness described in clause (1) above) since the beginning of the period, Consolidated EBITDAX and Consolidated Interest Expense for such period will be calculated after giving effect on a pro forma basis to such Incurrence, repayment, repurchase, defeasement or other discharge of Indebtedness as if such Incurrence, repayment, repurchase, defeasement or other discharge had occurred on the first day of such period (except that, in making such computation, the amount of Indebtedness under any revolving Credit Facility shall be computed based upon the average daily balance of such Indebtedness during such period);

(3) if, since the beginning of such period, the Company or any Restricted Subsidiary has made any Asset Disposition or if the transaction giving rise to the need to calculate the Consolidated Coverage Ratio is such an Asset Disposition, the Consolidated EBITDAX for such period will be reduced by an amount equal to the Consolidated EBITDAX (if positive) directly attributable to the assets which are the subject of such Asset Disposition for such period or increased by an amount equal to the Consolidated EBITDAX (if negative) directly attributable thereto for such period and Consolidated Interest Expense for such period shall be reduced by an amount equal to the Consolidated Interest Expense directly attributable to any Indebtedness of the Company or any Restricted Subsidiary repaid, repurchased, defeased or otherwise discharged with respect to the Company and its continuing Restricted Subsidiaries in connection with or with the proceeds from such Asset Disposition for such period (or, if the Capital Stock of any Restricted Subsidiary is sold, the Consolidated Interest Expense for such period directly attributable to the Indebtedness of such Restricted Subsidiary to the extent the Company and its continuing Restricted Subsidiaries are no longer liable for such Indebtedness after such sale);

(4) if, since the beginning of such period, the Company or any Restricted Subsidiary (by merger or otherwise) has made an Investment in any Restricted Subsidiary (or any Person which becomes a Restricted Subsidiary or is merged with or into the Company or a Restricted Subsidiary) or an acquisition (or will have received a contribution) of assets, including any acquisition or contribution of assets occurring in connection with a transaction causing a calculation to be made under this Indenture, which constitutes all or substantially all of a company, division, operating unit, segment, business, group of related assets or line of business, Consolidated EBITDAX and Consolidated Interest Expense for such period will be calculated after giving pro forma effect thereto (including the Incurrence of any Indebtedness) as if such Investment or acquisition or contribution had occurred on the first day of such period; and

(5) if, since the beginning of such period, any Person (that subsequently became a Restricted Subsidiary or was merged with or into the Company or any Restricted Subsidiary since the beginning of such period) made any Asset Disposition or any Investment or acquisition of assets that would have required an adjustment pursuant to clause (3) or (4) above if made by the Company or a Restricted Subsidiary during such period, Consolidated EBITDAX and Consolidated Interest Expense for such period will be calculated after giving pro forma effect thereto as if such Asset Disposition or Investment or acquisition of assets had occurred on the first day of such period.

For purposes of this definition, whenever pro forma effect is to be given to any calculation under this definition, the pro forma calculations will be determined in good faith by a responsible financial or accounting officer of the Company; *provided* that such officer may in his or her discretion include any reasonably identifiable and factually supportable pro forma changes to Consolidated EBITDAX, including any pro forma expenses and cost reductions, that have occurred or in the judgment of such officer are reasonably expected to occur within 12 months of the date of the applicable transaction (regardless of whether such expense or cost reduction or any other operating improvements could then be reflected properly in pro forma financial statements prepared in accordance with Regulation S-X under the Securities Act or any other regulation or policy of the SEC). If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest expense on such Indebtedness will be calculated as if the average rate in effect from the beginning of such period to the date of determination had been the applicable rate for the entire period (taking into account any Interest Rate Agreement applicable to such Indebtedness, but if the remaining term of such Interest Rate Agreement is less than 12 months, then such Interest Rate Agreement shall only be taken into account for that portion of the period equal to the remaining term thereof). If any Indebtedness that is being given pro forma effect bears an interest rate at the option of the Company, the interest rate shall be calculated by applying such optional rate chosen by the Company. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Company may designate.

"Consolidated EBITDAX" for any period means, without duplication, the Consolidated Net Income for such period, plus the following, without duplication and to the extent deducted (and not added back) in calculating such Consolidated Net Income:

(1) Consolidated Interest Expense;

(2) Consolidated Income Tax Expense;

(3) consolidated depletion and depreciation expense of the Company and its Restricted Subsidiaries;

(4) consolidated amortization expense or asset impairment charges of the Company and its Restricted Subsidiaries;

(5) other non-cash charges of the Company and its Restricted Subsidiaries (excluding any such non-cash charge to the extent it represents an accrual of or reserve for cash charges in any future period or amortization of a prepaid cash expense that was paid in a prior period not included in the calculation); and

(6) consolidated exploration and abandonment expense of the Company and its Restricted Subsidiaries,

if applicable for such period; and less, to the extent included in calculating such Consolidated Net Income and in excess of any costs or expenses attributable thereto that were deducted (and not added back) in calculating such Consolidated Net Income, the sum of (x) the amount of deferred revenues that are amortized during such period and are attributable to reserves that are subject to Volumetric Production Payments, (y) amounts recorded in accordance with GAAP as repayments of principal and interest pursuant to Dollar-Denominated Production Payments and (z) other non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated EBITDAX in any prior period).

"Consolidated Income Tax Expense" means, with respect to any period, the provision for federal, state, local and foreign income taxes (including state franchise taxes accounted for as income taxes in accordance with GAAP) of the Company and its Restricted Subsidiaries for such period as determined in accordance with GAAP.

"Consolidated Interest Expense" means, for any period, the total consolidated interest expense (less interest income) of the Company and its Restricted Subsidiaries, whether paid or accrued, plus, to the extent not included in such interest expense and without duplication:

(1) interest expense attributable to Capitalized Lease Obligations;

(2) amortization of debt discount and debt issuance cost (provided that any amortization of bond premium will be credited to reduce Consolidated Interest Expense unless, pursuant to GAAP, such amortization of bond premium has otherwise reduced Consolidated Interest Expense);

(3) non-cash interest expense (to the extent deducted in the calculation of Consolidated Net Income);

(4) commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing;

(5) the interest expense on Indebtedness of another Person that is Guaranteed by the Company or one of its Restricted Subsidiaries or secured by a Lien on assets of the Company or one of its Restricted Subsidiaries, whether or not such Guarantee or Lien is called upon;

(6) cash costs associated with Interest Rate Agreements (including amortization of fees); *provided*, *however*, that if Interest Rate Agreements result in net cash benefits rather than

costs, such benefits shall be credited to reduce Consolidated Interest Expense unless, pursuant to GAAP, such net benefits are otherwise reflected in Consolidated Net Income;

(7) the consolidated interest expense of the Company and its Restricted Subsidiaries that was capitalized during such period; and

(8) all dividends paid or payable in cash, Cash Equivalents or Indebtedness or accrued during such period on any series of Disqualified Stock of the Company or on Preferred Stock of its Restricted Subsidiaries payable to a party other than the Company or a Wholly-Owned Subsidiary,

minus, to the extent included above, any interest attributable to Dollar-Denominated Production Payments.

For the purpose of calculating the Consolidated Coverage Ratio in connection with the Incurrence of any Indebtedness described in clause (d) of the definition of "Indebtedness," the calculation of Consolidated Interest Expense shall include all interest expense (including any amounts described in clauses (1) through (8) above) relating to any Indebtedness of the Company or any Restricted Subsidiary described in clause (d) of the definition of "Indebtedness."

"Consolidated Net Income" means, for any period, the aggregate net income (loss) of the Company and its consolidated Restricted Subsidiaries determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends of such Person; *provided*, *however*, that there will not be included (to the extent otherwise included therein) in such Consolidated Net Income:

(1) any net income (loss) of any Person (other than the Company) if such Person is not a Restricted Subsidiary, except that:

(a) subject to the limitations contained in clauses (3) and (4) below, the Company's equity in the net income of any such Person for such period will be included in such Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such period to the Company or a Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution to a Restricted Subsidiary, to the limitations contained in clause (2) below); and

(b) the Company's equity in a net loss of any such Person for such period will be included in determining such Consolidated Net Income to the extent such loss has been funded with cash from the Company or a Restricted Subsidiary during such period;

(2) any net income (but not loss) of any Restricted Subsidiary (other than a Subsidiary Guarantor) if such Subsidiary is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions by such Restricted Subsidiary, directly or indirectly, to the Company, except that:

(a) subject to the limitations contained in clauses (3), (4) and (5) below, the Company's equity in the net income of any such Restricted Subsidiary for such period will be included in such Consolidated Net Income up to the aggregate amount of cash that could have been distributed by such Restricted Subsidiary during such period to the Company or another Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution paid to another Restricted Subsidiary, to the limitation contained in this clause); and

(b) the Company's equity in a net loss of any such Restricted Subsidiary for such period will be included in determining such Consolidated Net Income;

(3) any gain or loss realized upon the sale or other disposition of any property, plant or equipment of the Company or its consolidated Subsidiaries (including pursuant to any Sale/Leaseback Transaction) which is not sold or otherwise disposed of in the ordinary course of business and any gain or loss realized upon the sale or other disposition of any Capital Stock of any Person;

(4) any extraordinary or nonrecurring gains or losses, together with any related provision for taxes on such gains or losses and all related fees and expenses;

(5) the cumulative effect of a change in accounting principles;

(6) any "ceiling limitation" or other asset impairment write-downs on Oil and Gas Properties under GAAP or SEC guidelines;

(7) any unrealized non-cash gains or losses or charges in respect of Hedging Obligations or obligations under the Existing Net Profits Plan;

(8) income or loss attributable to discontinued operations (including, without limitation, operations disposed of during such period whether or not such operations were classified as discontinued);

(9) all deferred financing costs written off, and premiums paid, in connection with any early extinguishment of Indebtedness;

(10) non-cash interest expense attributable to the equity component of debt that is convertible into Capital Stock of the Company, including under ASC Topic 470; and

(11) any non-cash compensation charge arising from any grant of stock, stock options or other equity based awards.

"Convertible Secured Debt" means the Company's 1.500% Senior Convertible Notes due 2021.

"Corporate Trust Office of the Trustee" shall be at the address of the Trustee specified in Section 13.02 or such other address as to which the Trustee may give notice to the Company.

"Credit Facility" means, with respect to the Company or any Restricted Subsidiary, one or more debt facilities (including, without limitation, the Senior Secured Credit Agreement), commercial paper facilities, loan agreements or other financing agreements (other than bonds or debt securities), the majority of the loans or commitments under which, collectively, as of the date of the closing of such facilities or agreements, are provided by commercial banks, by affiliates of commercial banks customarily engaging in making or providing commercial loans or other financing, or by governmental authorities, and which facilities or agreements provide for revolving loans, term loans, letters of credit or similar financing arrangements, in each case, as amended, restated, modified, renewed, re-funded, replaced or refinanced in whole or in part from time to time with facilities or agreements that satisfy the above requirements.

"Currency Agreement" means in respect of a Person any foreign exchange contract, currency swap agreement, futures contract, option contract or other similar agreement as to which such Person is a party or a beneficiary.

"Custodian" means the Trustee, as custodian with respect to the Notes in global form, or any successor entity thereto.

"Default" means any event which is, or after notice or passage of time or both would be, an Event of Default.

"Definitive Note" means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 3.07, substantially in the form of Exhibit A hereto, except that, such Note shall not bear the Global Note Legend and shall not have the "Schedule of Exchanges of Interests in the Global Note" attached thereto.

"Depositary" means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 3.04 as the Depositary with respect to the Notes, and any and all successors thereto appointed as depositary hereunder and having become such pursuant to the applicable provisions of this Indenture.

"DIP Financing" has the meaning assigned to such term in the Intercreditor Agreement.

"Discharge of Priority Lien Obligations" means the occurrence of all of the following:

(1) termination or expiration of all commitments to extend credit that would constitute Priority Lien Debt;

(2) payment in full in cash of the principal of and interest and premium (if any) on all Priority Lien Debt (other than any undrawn letters of credit);

(3) discharge or cash collateralization (at the lower of (a) 102% of the aggregate undrawn amount and (b) the percentage of the aggregate undrawn amount required for release of liens under the terms of the applicable Priority Lien Document) of all outstanding letters of credit constituting Priority Lien Obligations and, in the case of discharge, the aggregate fronting and similar fees which have accrued thereon through the date of discharge of such letters of credit,

and, in the case of cash collateralization, the aggregate fronting and similar fees which will accrue thereon through the stated expiry of such letters of credit;

(4) payment in full in cash of obligations in respect of Hedging Obligations constituting Priority Lien Obligations (and, with respect to any particular Hedging Obligation, termination of such agreement and payment in full in cash of all obligations thereunder or such other arrangements as have been made by the counterparty thereto (and communicated to the Priority Lien Agent) pursuant to the terms of the Senior Secured Credit Agreement); and

(5) payment in full in cash of all other Priority Lien Obligations, including, without limitation, Bank Product Obligations that are outstanding and unpaid at the time the Priority Lien Debt is paid in full in cash (other than (i) any obligations for taxes, costs, indemnifications, reimbursements, damages and other liabilities in respect of which no claim or demand for payment has been made at or prior to such time and (ii) any Bank Product Obligations for which other arrangements have been made by the provider of such Bank Product Obligations (and communicated to the Priority Lien Agent) pursuant to the Priority Lien Documents);

provided that, if, at any time after the Discharge of Priority Lien Obligations has occurred, the Company or any Subsidiary Guarantor enters into any Priority Lien Document evidencing a Priority Lien Obligation the incurrence of which is not prohibited by the applicable Secured Debt Documents, then such Discharge of Priority Lien Obligations shall automatically be deemed not to have occurred for all purposes of the Intercreditor Agreement with respect to such new Priority Lien Obligation (other than with respect to any actions taken as a result of the occurrence of such first Discharge of Priority Lien Obligations), and, from and after the date on which the Company designates such Indebtedness as Priority Lien Debt in accordance with the Intercreditor Agreement, the obligations under such Priority Lien Document shall automatically and without any further action be treated as Priority Lien Obligations for all purposes of the Intercreditor Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth in the Intercreditor Agreement and any Parity Lien Obligations shall be deemed to have been at all times Parity Lien Obligations and at no time Priority Lien Obligations and any Junior Lien Obligations shall be deemed to have been at all times Junior Lien Obligations and at no time Priority Lien Obligations or Parity Lien Obligations.

For the avoidance of doubt, a replacement of Priority Lien Obligations with other Priority Lien Obligations to the extent contemplated and permitted by the Intercreditor Agreement shall not be deemed to cause a Discharge of Priority Lien Obligations.

"Disqualified Stock" means, with respect to any Person, any Capital Stock of such Person which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) at the option of the holder of the Capital Stock or upon the happening of any event:

(1) matures or is mandatorily redeemable (other than redeemable only for Capital Stock of such Person which is not itself Disqualified Stock) pursuant to a sinking fund obligation or otherwise;

(2) is convertible or exchangeable for Disqualified Stock or other Indebtedness (excluding Capital Stock which is convertible or exchangeable solely at the option of the Company or a Restricted Subsidiary); or

(3) is redeemable at the option of the holder of the Capital Stock in whole or in part (other than, including at the issuer's election, solely in exchange for Capital Stock which is not Disqualified Stock),

in each case on or prior to the date that is 91 days after the earlier of the date (a) of the Stated Maturity of the Notes or (b) on which there are no Notes outstanding; *provided* that only the portion of Capital Stock which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock; *provided further*, that any Capital Stock that would constitute Disqualified Stock solely because the holders thereof have the right to require the Company to repurchase such Capital Stock upon the occurrence of a change of control or asset sale (each defined in a substantially similar manner to the corresponding definitions in this Indenture) shall not constitute Disqualified Stock if the terms of such Capital Stock (and all such securities into which it is convertible or for which it is exchangeable) provide that (i) the Company may not repurchase or redeem any such Capital Stock (and all such securities into which it is convertible or for which it is ratable or exchangeable) pursuant to such provision prior to compliance by the Company with Sections 5.11 and 5.15 and (ii) such repurchase or redemption will be permitted solely to the extent also permitted in accordance with Section 5.08.

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

"DTC" means The Depository Trust Company.

"Equity Interests" means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

"Euroclear" means Euroclear Bank S.A./N.V., as operator of the Euroclear system, and its successors.

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

"Exchange Offers" means the offers to exchange Existing Notes for Notes, made pursuant to (i) the Offering Memorandum and (ii) the Securities Exchange Agreement, dated as of May 31, 2020, among the Company and the holders of Existing Notes identified therein.

"Excluded Assets" means:

(1) Any Equity Interests owned by the Company or any Subsidiary Guarantor in any Unrestricted Subsidiary;

(2) Any outstanding voting Equity Interests owned by the Company or any Subsidiary Guarantor in any Excluded Foreign Subsidiary in excess of 65% of the total outstanding voting Equity Interests of such Excluded Foreign Subsidiary;

(3) Any Property in any case to the extent (but only to the extent) (A) that by its terms forbids or makes void or unenforceable any grant of a security interest in such Property unless pursuant to applicable Legal Requirements such terms are unenforceable or all consents necessary to enable the grant of a security interest in such property have been received or (B) the assignment of which, or the grant of a security interest in, such Property is prohibited by any applicable Legal Requirements; and

(4) Any Property of (A) any Restricted Subsidiary that is an Immaterial Subsidiary for so long as such Restricted Subsidiary remains an Immaterial Subsidiary or (B) any Unrestricted Subsidiary for so long as, subject to the preceding clause (A), such Subsidiary remains an Unrestricted Subsidiary,

provided that any Excluded Asset shall automatically cease to be an "Excluded Asset" and shall, to the extent such Property would otherwise be Collateral but for the fact that it was an Excluded Asset, automatically become subject to the Lien and security interest granted under the Note Documents and to the terms and provisions thereof as "Collateral," to the extent that (x) either of the prohibitions discussed in clause (3) of this definition is ineffective or subsequently rendered ineffective under the UCC or any other applicable Legal Requirements or is otherwise no longer in effect or (y) the Company or any applicable Subsidiary Guarantor has obtained the consent of parties applicable to such Excluded Asset necessary for the creation of a Lien and security interest in such Excluded Asset; *provided*, *further*, that any proceeds received by the Company or any Subsidiary Guarantor from the sale, transfer or other disposition of any Excluded Asset shall constitute Collateral unless any assets or Property constituting such proceeds are themselves subject to the exclusions set forth in clauses (1) through (4) above.

"Excluded Foreign Subsidiary" means any Restricted Subsidiary that is not organized under the laws of any jurisdiction within the United States, in respect of which either the (a) pledge of all of the Equity Interests of such Restricted Subsidiary as collateral or (b) guaranteeing by such Restricted Subsidiary of the obligations pursuant to this Indenture or the Priority Lien Obligations, would, in the good faith judgment of the Company, result in adverse tax consequences to the Company.

"Excluded Subsidiaries" means (a) each Unrestricted Subsidiary, (b) each Immaterial Subsidiary and (c) each Excluded Foreign Subsidiary. Subject to any applicable collateral periods after the Issue Date, notwithstanding the foregoing, any Person that is an obligor or guarantor under the Senior Secured Credit Agreement or Refinancing Credit Facility, as applicable, shall not be an Excluded Subsidiary and, if not already a Subsidiary Guarantor, shall become a Subsidiary Guarantor.

"Existing Net Profits Plan" means the Company's legacy Net Profits Interest Bonus Plan in existence as of the Issue Date.

"Existing Notes" means the Company's:

(1) 1.500% Senior Convertible Notes due 2021,

(2) 6.125% Senior Notes due 2022,

(3) 5.000% Senior Notes due 2024,

(4) 5.625% Senior Notes due 2025,

(5) 6.750% Senior Notes due 2026, and

(6) 6.625% Senior Notes due 2027.

"Fair Market Value" means, with respect to any asset or property, the sale value that would be obtained in an arm's-length free market transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer under no compulsion to buy. Fair Market Value of an asset or property equal to or in excess of $100.0 million shall be determined by the Board of Directors of the Company acting in good faith, whose determination shall be conclusive and evidenced by Board Resolution delivered to the Trustee, and any lesser Fair Market Value may be determined by an officer of the Company acting in good faith.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System or any of its successors.

"Generally Accepted Accounting Principles" or "GAAP" means generally accepted accounting principles in the United States of America as in effect from time to time. All ratios and computations based on GAAP contained in this Indenture will be computed in conformity with GAAP.

"Global Note Legend" means the legend set forth in Section 3.07(g)(2), which is required to be placed on all Global Notes issued under this Indenture.

"Global Notes" means a Note in global form registered in the name of the Depositary or its nominee, substantially in the form of Exhibit A hereto, and that bears the Global Note Legend and that has the "Schedule of Exchanges of Interests in the Global Note" attached thereto, issued in accordance with Sections 3.01, 3.07(b)(3), 3.07(b)(4), 3.07(d)(1), 3.07(d)(2) or 3.07(d)(3) of Article Three of this Indenture.

"Government Obligations" means direct obligations of, or obligations guaranteed or insured by, (i) the United States or any agency or instrumentality thereof for the payment of which guarantee or obligations the full faith and credit of the United States is pledged, (ii) Canada or any agency or instrumentality thereof for the payment of which guarantee or obligations the full faith and credit of Canada is pledged or (iii) European Union or any agency

or instrumentality thereof for the payment of which guarantee or obligations the full faith and credit of the European Union is pledged.

"Government Securities" means securities that are:

(1) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged; or

(2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America;

that, in either case, are not callable or redeemable at the option of the issuer thereof, and will also include a depository receipt issued by a bank (as defined in Section 3(a) of the Securities Act), as custodian, with respect to any such Government Security or a specific payment of principal of or interest on any such Government Security held by such custodian for the account of the holder of such depository receipt; *provided*, *however*, that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Security or the specific payment of principal of or interest on the Government Security evidenced by such depository receipt.

"Governmental Authority" means the government of the United States of America or any other nation, or of 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 (including any supra-national bodies, such as the European Union or the European Central Bank).

"Guarantee" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person and any obligation, direct or indirect, contingent or otherwise, of such Person:

(1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise); or

(2) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part);

provided, *however*, that the term "Guarantee" will not include endorsements for collection or deposit in the ordinary course of business or any obligation to the extent it is payable only in Capital Stock of the Subsidiary Guarantor that is not Disqualified Stock. The term "Guarantee" used as a verb has a corresponding meaning.

"Guarantor Subordinated Obligation" means, with respect to a Subsidiary Guarantor, any Indebtedness of such Subsidiary Guarantor (whether outstanding on the Issue Date or thereafter Incurred) which is expressly subordinate in right of payment to the obligations of such Subsidiary Guarantor under its Subsidiary Guarantee pursuant to a written agreement.

"Hedging Obligations" of any Person means the obligations of such Person incurred for non-speculative purposes pursuant to any Interest Rate Agreement, Currency Agreement or Commodity Agreement; *provided* that no obligations in respect of 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 Company or any Subsidiary thereof shall be Hedging Obligations.

"Holder" means a Person in whose name a Note is registered on the Registrar's books.

"Hydrocarbons" means oil, natural gas, casing head gas, drip gasoline, natural gasoline, condensate, distillate, liquid hydrocarbons, gaseous hydrocarbons and all constituents, elements or compounds thereof and products refined or processed therefrom.

"Immaterial Subsidiary" means, as of any date, any Restricted Subsidiary that together with its Restricted Subsidiaries, does not own 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, which represents more than 10% of the consolidated assets of the Company and its Subsidiaries or property which is responsible for more than 10% of the consolidated net sales or of the consolidated net income of the Company and its Subsidiaries, in each case, as would be shown in the consolidated financial statements of the Company and its Subsidiaries on the first day of the twelve-month period ending with the month in which such determination is made (or if financial statements have not been delivered under the Senior Secured Credit Agreement for that month which begins the twelve-month period, then the financial statements delivered thereunder for the quarter ending immediately prior to that month); *provided, however,* that the Immaterial Subsidiaries, taken together, shall not own 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 which represents more than 12% of the consolidated assets of the Company and its Subsidiaries or property which is responsible for more than 12% of the consolidated net sales or of the consolidated net income of the Company and its Subsidiaries, in each case, in the aggregate as would be shown in the consolidated financial statements of the Company and its Subsidiaries on the first day of the twelve-month period ending with the month in which such determination is made (or if financial statements have not been delivered under the Senior Secured Credit Agreement for that month which begins the twelve-month period, then the financial statements delivered thereunder for the quarter ending immediately prior to that month).

"Incur" means issue, create, assume, Guarantee, incur or otherwise become directly or indirectly liable for, contingently or otherwise; *provided*, *however*, that any Indebtedness or Capital Stock of a Person existing at the time such Person becomes a Restricted Subsidiary (whether by merger, consolidation, acquisition or otherwise) will be deemed to be Incurred by

such Restricted Subsidiary at the time it becomes a Restricted Subsidiary; and the terms "Incurred" and "Incurrence" have meanings correlative to the foregoing.

"Indebtedness" means,

(a) with respect to any Person on any date of determination (without duplication, whether or not contingent):

(1) the principal of and premium (if any) in respect of indebtedness of such Person for borrowed money;

(2) the principal of and premium (if any) in respect of obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;

(3) the principal component of all obligations of such Person in respect of letters of credit, bankers' acceptances or other similar instruments (including reimbursement obligations with respect thereto except to the extent such reimbursement obligation relates to a trade payable and except to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such obligation is satisfied within 30 days of payment on the letter of credit);

(4) the principal component of all obligations of such Person (other than obligations payable solely in Capital Stock that is not Disqualified Stock) to pay the deferred and unpaid purchase price of property (except as described in clause (c)(8) of this definition of "Indebtedness"), which purchase price is due more than six months after the date of placing such property in service or taking delivery and title thereto to the extent such obligations would appear as a liabilities upon the consolidated balance sheet of such Person in accordance with GAAP;

(5) Capitalized Lease Obligations of such Person to the extent such Capitalized Lease Obligations would appear as liabilities on the consolidated balance sheet of such Person in accordance with GAAP;

(6) the principal component or liquidation preference of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock or, with respect to any Subsidiary that is not a Subsidiary Guarantor, any Preferred Stock (but excluding, in each case, any accrued dividends);

(7) the principal component of all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; provided, however, that the amount of such Indebtedness will be the lesser of (i) the Fair Market Value of such asset at such date of determination and (ii) the amount of such Indebtedness of such other Persons;

(8) the principal component of Indebtedness of other Persons to the extent Guaranteed by such Person; and

(9) to the extent not otherwise included in this definition, net obligations of such Person under Commodity Agreements, Currency Agreements and Interest Rate Agreements

(the amount of any such obligations to be equal at any time to the termination value of such agreement or arrangement giving rise to such obligation that would be payable by such Person at such time);

provided, however, that any indebtedness which has been defeased in accordance with GAAP or defeased pursuant to the deposit of cash or Cash Equivalents (in an amount sufficient to satisfy all such indebtedness obligations at maturity or redemption, as applicable, and all payments of interest and premium, if any) in a trust or account created or pledged for the sole benefit of the holders of such indebtedness, and subject to no other Liens, shall not constitute "Indebtedness."

(b) The amount of Indebtedness of any Person at any date will be the outstanding balance at such date of all unconditional obligations as described above and the maximum liability, upon the occurrence of the contingency giving rise to the obligation, of any contingent obligations at such date.

(c) Notwithstanding the preceding, "Indebtedness" shall not include:

(1) Production Payments and Reserve Sales;

(2) any obligation of a Person in respect of a farm-in agreement or similar arrangement whereby such Person agrees to pay all or a share of the drilling, completion or other expenses of an exploratory or development well (which agreement may be subject to a maximum payment obligation, after which expenses are shared in accordance with the working or participation interest therein or in accordance with the agreement of the parties) or perform the drilling, completion or other operation on such well in exchange for an ownership interest in an oil or gas property;

(3) any obligations under Currency Agreements, Commodity Agreements and Interest Rate Agreements; *provided* that such agreements are entered into for bona fide hedging purposes of the Company or its Restricted Subsidiaries (as determined in good faith by the Board of Directors or senior management of the Company, whether or not accounted for as a hedge in accordance with GAAP) and, in the case of Currency Agreements or Commodity Agreements, such Currency Agreements or Commodity Agreements are related to business transactions of the Company or its Restricted Subsidiaries entered into in the ordinary course of business and, in the case of Interest Rate Agreements, such Interest Rate Agreements substantially correspond in terms of notional amount, duration and interest rates, as applicable, to Indebtedness of the Company or its Restricted Subsidiaries Incurred without violation of this Indenture;

(4) any obligation arising from agreements of the Company or a Restricted Subsidiary providing for indemnification, Guarantees, adjustment of purchase price, holdbacks, contingency payment obligations or similar obligations, in each case, Incurred or assumed in connection with the acquisition or disposition of any business, assets or Capital Stock of a Restricted Subsidiary, provided that such Indebtedness is not reflected on the face of the balance sheet of the Company or any Restricted Subsidiary;

(5) any obligation arising from the honoring by a bank or other financial institution of a check, draft or similar instrument (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business, provided that such Indebtedness is extinguished within five Business Days of Incurrence;

(6) in-kind obligations relating to net oil or natural gas balancing positions arising in the ordinary course of business;

(7) all contracts and other obligations, agreements, instruments or arrangements described in clauses (19), (20), (21) or (27) (a) of the definition of "Permitted Liens;" and

(8) accrued expenses and trade payables and other accrued liabilities arising in the ordinary course of business that are not overdue by 90 days past the invoice or billing date or more or are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted.

(d) In addition, "Indebtedness" of any Person shall include Indebtedness described in clause (a) of this definition of "Indebtedness" that would not appear as a liability on the balance sheet of such Person if:

(1) such Indebtedness is the obligation of a partnership or joint venture that is not a Restricted Subsidiary (a "Joint Venture");

(2) such Person or a Restricted Subsidiary of such Person is a general partner of the Joint Venture or otherwise liable for all or a portion of the Joint Venture's liabilities (a "General Partner"); and

(3) there is recourse, by contract or operation of law, with respect to the payment of such Indebtedness to property or assets of such Person or a Restricted Subsidiary of such Person; and then such Indebtedness shall be included in an amount not to exceed:

(i) the lesser of (A) the net assets of the General Partner and (B) the amount of such obligations to the extent that there is recourse, by contract or operation of law, to the property or assets of such Person or a Restricted Subsidiary of such Person; or

(ii) if less than the amount determined pursuant to clause (i) immediately above, the actual amount of such Indebtedness that is with recourse to such Person or a Restricted Subsidiary of such Person, if the Indebtedness is evidenced by a writing and is for a determinable amount and the related interest expense shall be included in Consolidated Interest Expense to the extent actually paid by such Person and its Restricted Subsidiaries.

(e) For the avoidance of doubt, the Company's Existing Notes and the Notes constitute Indebtedness and do not constitute Subordinated Obligations.

"Indirect Participant" means a Person who holds a beneficial interest in a Global Note through a Participant.

"Initial Notes" means the Notes that are issued on the Issue Date.

"Insolvency or Liquidation Proceeding" means:

(1) any case or proceeding commenced by or against the Company or any Subsidiary Guarantor under the Bankruptcy Code or any other Bankruptcy Law, any other proceeding for the reorganization, recapitalization or adjustment or marshalling of the assets or liabilities of the Company or any Subsidiary Guarantor, any receivership or assignment for the benefit of creditors relating to the Company or any Subsidiary Guarantor or any similar case or proceeding relative to the Company or any Subsidiary Guarantor or its creditors, as such, in each case whether or not voluntary;

(2) any liquidation, dissolution, marshalling of assets or liabilities or other winding up of or relating to the Company or any Subsidiary Guarantor, in each case whether or not voluntary and whether or not involving bankruptcy or insolvency; or

(3) any other proceeding of any type or nature in which substantially all claims of creditors of the Company or any Subsidiary Guarantor are determined and any payment or distribution is or may be made on account of such claims.

"Intercreditor Agreement" means the Intercreditor Agreement among the Collateral Trustee, the Trustee, the Priority Lien Agent and the other parties from time to time party thereto, and acknowledged by the Company, entered into on the Issue Date, as it may be amended, restated, supplemented or otherwise modified from time to time in accordance with this Indenture.

"Interest Payment Date" has the meaning stated in Exhibit A hereto.

"Interest Rate Agreement" means with respect to any Person any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedge agreement or other similar agreement or arrangement designed to protect such Person against or manage exposure to fluctuations in interest rates or equity dilution related to Indebtedness permitted under this Indenture.

"Investment" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of any direct or indirect advance, loan or other extensions of credit (including by way of Guarantee or similar arrangement, but excluding any debt or extension of credit represented by a bank deposit other than a time deposit and advances or extensions of credit to customers in the ordinary course of business) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or any purchase or acquisition of Capital Stock, Indebtedness or other similar instruments (excluding any interest in an oil or natural gas

leasehold to the extent constituting a security under applicable Legal Requirements) issued by, such other Person and all other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP; *provided* that none of the following will be deemed to be an Investment:

(1) Hedging Obligations entered into in the ordinary course of business for non-speculative purposes and consistent with past practices and in compliance with this Indenture;

(2) endorsements of negotiable instruments and documents in the ordinary course of business; and

(3) an acquisition of assets, Capital Stock or other securities by the Company or a Subsidiary for consideration to the extent such consideration consists of Common Stock of the Company.

The amount of any Investment shall not be adjusted for increases or decreases in value, write-ups, write-downs or write-offs with respect to such Investment.

For purposes of the definition of "Unrestricted Subsidiary" and Section 5.08:

(1) "Investment" will include the portion (proportionate to the Company's equity interest in a Restricted Subsidiary to be designated as an Unrestricted Subsidiary) of the Fair Market Value of the net assets of such Restricted Subsidiary at the time that such Restricted Subsidiary is designated an Unrestricted Subsidiary; *provided*, *however*, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Company will be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary in an amount (if positive) equal to:

(a) the Company's "Investment" in such Subsidiary at the time of such redesignation less,

(b) the portion (proportionate to the Company's equity interest in such Subsidiary) of the Fair Market Value of the net assets of such Subsidiary at the time that such Subsidiary is so re-designated a Restricted Subsidiary; and

(2) any property transferred to or from an Unrestricted Subsidiary will be valued at its Fair Market Value at the time of such transfer.

"Investment Grade Rating" means a rating equal to or higher than:

(1) Baa3 (or the equivalent) by Moody's; and

(2) BBB– (or the equivalent) by S&P,

or, if either such Rating Agency ceases to make a rating on the Notes publicly available for reasons outside of the Company's control, the equivalent investment grade credit rating from any other Rating Agency.

"Investment Grade Rating Event" means the first day on which the Notes have an Investment Grade Rating from each Rating Agency, and no Default has occurred and is then continuing under this Indenture.

"Issue Date" means the first date on which the Notes are issued under this Indenture.

"Junior Lien" means a Lien, junior to the Priority Liens and the Parity Liens as provided in the Intercreditor Agreement, granted by the Company or any Subsidiary Guarantor in favor of holders of Junior Lien Debt (or any collateral trustee or representative in connection therewith), at any time, upon any assets or property of the Company or any Subsidiary Guarantor to secure Junior Lien Obligations.

"Junior Lien Collateral" means all "Collateral" (or comparable term) as defined in the Junior Lien Documents, and any property or assets of the Company or any Subsidiary Guarantor now or at any time hereafter subject to Liens which secure, but only to the extent securing, any Junior Lien Obligation.

"Junior Lien Collateral Trustee" means the agent, collateral agent, trustee or other representative of lenders or other Junior Lien Secured Parties designated pursuant to the terms of the Junior Lien Documents and the Intercreditor Agreement, in each case, together with its successors in such capacity.

"Junior Lien Debt" means any Indebtedness (other than intercompany Indebtedness owing to the Company or its Subsidiaries) of the Company or any Subsidiary Guarantor (including any Refinancing Indebtedness in respect thereof to the extent permitted by the Intercreditor Agreement) that is secured by a Junior Lien and that was permitted to be incurred under Section 5.07(a) of this Indenture or clauses (1) or (10) of the definition of "Permitted Debt" and Refinancing Indebtedness secured by a Junior Lien incurred in respect of any of the foregoing pursuant to clause (6) of the definition of "Permitted Debt" and also permitted to be incurred and so secured under each applicable Secured Debt Document; *provided* that, in the case of any Indebtedness referred to in this definition:

(1) on or before the date on which such Indebtedness is incurred by the Company or any Subsidiary Guarantor, such Indebtedness is designated by the Company, in an officers' certificate delivered to the Junior Lien Collateral Trustee and Collateral Trustee as "Junior Lien Debt" for the purposes of the Secured Debt Documents; *provided* that no Series of Secured Debt may be designated as both "Junior Lien Debt" and "Parity Lien Debt" or "Priority Lien Debt" (or any combination of the three);

(2) the collateral agent or other representative with respect to such Indebtedness, the Priority Lien Agent, the Junior Lien Collateral Trustee, the Collateral Trustee, the Company and each applicable Subsidiary Guarantor have duly executed and delivered the Intercreditor Agreement (or a joinder to the Intercreditor Agreement or a new Intercreditor Agreement substantially similar to the Intercreditor Agreement, and in a form reasonably acceptable to each of the parties thereto); and

(3) all other requirements set forth in the Intercreditor Agreement as to the confirmation, grant or perfection of the Liens of the holders of Junior Lien Debt to secure such Indebtedness or obligations in respect thereof are satisfied.

"Junior Lien Documents" means, collectively, any indenture, credit agreement or other agreement or instrument pursuant to which Junior Lien Debt is incurred and the documents pursuant to which Junior Lien Obligations are granted.

"Junior Lien Obligations" means Junior Lien Debt and all other obligations in respect thereof. Notwithstanding any other provision hereof, the term "Junior Lien Obligations" will include accrued interest, fees, costs, and other charges incurred under the Junior Lien Documents, whether incurred before or after commencement of an Insolvency or Liquidation Proceeding. To the extent that any payment with respect to the Junior Lien Obligations (whether by or on behalf of the Company, as proceeds of security, enforcement of any right of set-off, or otherwise) is declared to be fraudulent or preferential in any respect, set aside, or required to be paid to a debtor in possession, trustee, receiver, or similar Person, then the obligation or part thereof originally intended to be satisfied will be deemed to be reinstated and outstanding as if such payment had not occurred.

"Junior Lien Representative" means in the case of any Series of Junior Lien Debt, the trustee, agent or representative of the holders of such Series of Junior Lien Debt who maintains the transfer register for such Series of Junior Lien Debt and is appointed as a representative of the Junior Lien Debt (for purposes related to the administration of the security documents) pursuant to the indenture, credit agreement or other agreement governing such Series of Junior Lien Debt, together with its successors in such capacity.

"Junior Lien Secured Party" means any Junior Lien Representative, the Junior Lien Collateral Trustee and any holder of Junior Lien Obligations.

"Legal Requirement" means, as to any Person, any law, statute, ordinance, decree, requirement, order, judgment, rule, regulation (or official interpretation of any of the foregoing) of, and the terms of any license or permit issued by, any Governmental Authority, including Regulations D, T, U, and X, which is applicable to such Person.

"Lien" means, with respect to any asset, any mortgage, lien (statutory or otherwise), pledge, hypothecation, charge, security interest, preference, priority or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable Legal Requirements, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction; *provided* that in no event shall an operating lease be deemed to constitute a Lien.

"Minority Interest" means the percentage interest represented by any class of Capital Stock of a Restricted Subsidiary that are not owned by the Company or a Restricted Subsidiary.

"Moody's" means Moody's Investors Service, Inc., or any successor to the rating agency business thereof.

"Mortgages" means all mortgages, deeds of trust and similar documents, instruments and agreements (and all amendments, restatements, modifications and supplements thereof) creating, evidencing, perfecting or otherwise establishing the Liens securing payment of the Notes and the Subsidiary Guarantees or any part thereof.

"Net Available Cash" from an Asset Disposition means cash payments received (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise and net proceeds from the sale or other disposition of any securities received as consideration, but only as and when received, but excluding any other consideration received in the form of assumption by the acquiring Person of Indebtedness or other obligations relating to the properties or assets that are the subject of such Asset Disposition or received in any other non-cash form) therefrom, in each case net of:

(1) all legal, accounting, investment banking, title and recording tax expenses, commissions and other fees and expenses Incurred, and all federal, state, provincial, foreign and local taxes required to be paid or accrued as a liability under GAAP (after taking into account any available tax credits or deductions and any tax sharing agreements), as a consequence of such Asset Disposition;

(2) all payments made on any Indebtedness which is secured by any assets subject to such Asset Disposition, in accordance with the terms of any Lien upon such assets, or which must by its terms, or in order to obtain a necessary consent to such Asset Disposition, or by applicable Legal Requirements be repaid out of the proceeds from such Asset Disposition; *provided* that such payments are permanent and any commitment in connection therewith is permanently reduced;

(3) all distributions and other payments required to be made to minority interest holders in Subsidiaries or joint ventures or to holders of royalty or similar interests or interests under the Existing Net Profits Plan as a result of such Asset Disposition;

(4) the deduction of appropriate amounts to be provided by the seller as a reserve, in accordance with GAAP, against any liabilities associated with the assets disposed of in such Asset Disposition and retained by the Company or any Restricted Subsidiary after such Asset Disposition; and

(5) all relocation expenses incurred as a result thereof and all related severance and associated costs, expenses and charges of personnel related to assets and related operations disposed of;

provided, *however*, that if any consideration for an Asset Disposition (that would otherwise constitute Net Available Cash) is required to be held in escrow pending determination of whether or not a purchase price adjustment will be made, such consideration (or any portion thereof) shall

become Net Available Cash only at such time as it is released to the Company or any of its Restricted Subsidiaries from escrow.

"Net Cash Proceeds" with respect to any issuance or sale of Capital Stock or any contribution to equity capital, means the cash proceeds of such issuance, sale or contribution net of attorneys' fees, accountants' fees, underwriters' or placement agents' fees, listing fees, discounts or commissions and brokerage, consultant and other fees and charges actually Incurred in connection with such issuance, sale or contribution and net of taxes paid or payable as a result of such issuance or sale (after taking into account any available tax credit or deductions and any tax sharing arrangements).

"Net Working Capital" means (a) all current assets of the Company and its Restricted Subsidiaries, except current assets from commodity price risk management activities arising in the ordinary course of the Oil and Gas Business, less (b) all current liabilities of the Company and its Restricted Subsidiaries, except current liabilities (i) associated with asset retirement obligations relating to Oil and Gas Properties, (ii) included in Indebtedness and (iii) any current liabilities from commodity price risk management activities arising in the ordinary course of the Oil and Gas Business, in each case as set forth in the consolidated financial statements of the Company prepared in accordance with GAAP.

"Non-Recourse Debt" means Indebtedness of a Person:

(1) as to which neither the Company nor any Restricted Subsidiary (a) provides any Guarantee or credit support of any kind (including any undertaking, guarantee, indemnity, agreement or instrument that would constitute Indebtedness) or (b) is directly or indirectly liable (as a guarantor or otherwise);

(2) no default with respect to which (including any rights that the holders thereof may have to take enforcement action against an Unrestricted Subsidiary) would permit (upon notice, lapse of time or both) any holder of any other Indebtedness of the Company or any Restricted Subsidiary to declare a default under such other Indebtedness or cause the payment thereof to be accelerated or payable prior to its Stated Maturity; and

(3) the explicit terms of which provide there is no recourse against any of the assets of the Company or its Restricted Subsidiaries.

"Non-Recourse Purchase Money Indebtedness" means Indebtedness (other than Capitalized Lease Obligations) of the Company or any Restricted Subsidiary Incurred in connection with the acquisition by the Company or such Restricted Subsidiary in the ordinary course of business of fixed assets used in the Oil and Gas Business (including office buildings and other real property used by the Company or such Restricted Subsidiary in conducting its operations) with respect to which (a) the holders of such Indebtedness agree that they will look solely to the fixed assets so acquired which secure such Indebtedness, and neither the Company nor any Restricted Subsidiary (i) is directly or indirectly liable for such Indebtedness or (ii) provides credit support, including any undertaking, Guarantee, agreement or instrument that would constitute Indebtedness (other than the grant of a Lien on such acquired fixed assets), and

(b) no default or event of default with respect to such Indebtedness would cause, or permit (after notice or passage of time or otherwise), any holder of any other Indebtedness of the Company or a Restricted Subsidiary to declare a default or event of default on such other Indebtedness or cause the payment, repurchase, redemption, defeasance or other acquisition or retirement for value thereof to be accelerated or payable prior to any scheduled principal payment, scheduled sinking fund payment or maturity.

"Notes" has the meaning assigned to it in the Recitals to this Indenture. For all purposes of this Indenture, the term "Notes" shall include the Initial Notes and all Additional Notes issued hereunder, and all such Notes shall be treated as a single class.

"Note Documents" means this Indenture, the Notes, the Subsidiary Guarantees, the Security Documents and the Intercreditor Agreement.

"Obligations" means, in respect to a reference Indebtedness, any principal, premium, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing such Indebtedness.

"Offering Memorandum" means the Confidential Offering Memorandum and Consent Solicitation Statement of the Company, dated April 29, 2020, as supplemented or amended through the date of this Indenture.

"Officer" means the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer or the Secretary of the Company. Officer of any Subsidiary Guarantor has a correlative meaning.

"Officers' Certificate" means a certificate signed by two Officers of the Company.

"Oil and Gas Business" means:

(1) the business of acquiring, exploring, exploiting, developing, producing, operating and disposing of interests in oil, natural gas, liquefied natural gas and other Hydrocarbon, mineral and renewable energy properties or products produced in association with any of the foregoing;

(2) the business of gathering, marketing, distributing, treating, processing, storing, refining, selling and transporting of any production from such interests or properties and products produced in association therewith and the marketing of oil, natural gas, other Hydrocarbons, minerals and renewable energy obtained from unrelated Persons;

(3) any other related energy business, including power generation and electrical transmission business, directly or indirectly, from oil, natural gas and other Hydrocarbons, minerals and renewable energy produced substantially from properties in which the Company or its Restricted Subsidiaries, directly or indirectly, participate;

(4) any business relating to oil field sales and service or drilling rigs; and

(5) any business or activity relating to, arising from, or necessary, appropriate or incidental to the activities described in the foregoing clauses (1) through (4) of this definition.

"Oil and Gas Properties" means all properties, including equity or other ownership interests therein, owned by a Person which contain or are believed to contain oil and gas reserves.

"Opinion of Counsel" means a written opinion from legal counsel who is acceptable to the Trustee or, where applicable, to any Person who is to receive such opinion pursuant to this Indenture. The counsel may be an employee of or counsel to the Company or the Trustee or any Person who is required to deliver such opinion pursuant to this Indenture.

"Parity Lien" means a Lien junior to the Priority Liens and senior to the Junior Liens as provided in the Intercreditor Agreement, granted by the Company or any Subsidiary Guarantor in favor of the Collateral Trustee pursuant to a Security Document, at any time, upon any property and assets of the Company or any Subsidiary Guarantor to secure Parity Lien Obligations.

"Parity Lien Debt" means:

(1) the Notes issued on the Issue Date and Subsidiary Guarantees thereof; and

(2) any other Indebtedness (other than intercompany Indebtedness owing to the Company or its Subsidiaries) of the Company or any Subsidiary Guarantor that is (i) secured equally and ratably with the Notes or any other Parity Lien Debt by a Parity Lien, (ii) incurred under clauses (4) or (6) of the definition of "Permitted Debt" (insofar as such Indebtedness incurred under clause (6) refinances Indebtedness incurred under clause (4) of the definition of "Permitted Debt") and (iii) permitted to be incurred and so secured under each applicable Priority Lien Document, Parity Lien Document and Junior Lien Document; *provided* that, in the case of any Indebtedness referred to in this clause (2) of this definition:

(a) on or before the date on which such Indebtedness is incurred by the Company or any Subsidiary Guarantor, such Indebtedness is designated by the Company, in an Officers' Certificate delivered to each Parity Lien Representative and the Collateral Trustee, as "Parity Lien Debt" for the purposes of this Indenture and the Collateral Trust Agreement; *provided further* that no Series of Secured Debt may be designated as both "Parity Lien Debt" and "Priority Lien Debt" or "Junior Lien Debt" (or any combination of the three);

(b) the Parity Lien Representative of such Parity Lien Debt (other than Additional Notes, if any) shall have executed and delivered an Additional Secured Debt Designation on behalf of itself and all holders of such Indebtedness; and

(c) all requirements set forth in the Collateral Trust Agreement as to the confirmation, grant or perfection of the Collateral Trustee's Liens to secure such Indebtedness or obligations in respect thereof are satisfied (and the satisfaction of such requirements and the other provisions of this clause (2) will be conclusively established if the Company delivers to the Collateral Trustee an Officers'

Certificate stating that such requirements and other provisions have been satisfied and that such Indebtedness is "Parity Lien Debt").

"Parity Lien Documents" means, collectively, the Note Documents and any additional indenture, supplemental indenture, credit agreement or other agreement governing each other Series of Parity Lien Debt and the Security Documents (other than any Security Documents that do not secure Parity Lien Obligations).

"Parity Lien Obligations" means Parity Lien Debt and all other obligations in respect thereof. Notwithstanding any other provision hereof, the term "Parity Lien Obligations" will include accrued interest, fees, costs, and other charges incurred under this Indenture and the other Parity Lien Documents, whether incurred before or after commencement of an Insolvency or Liquidation Proceeding and whether or not allowable in an Insolvency or Liquidation Proceeding. To the extent that any payment with respect to the Parity Lien Obligations (whether by or on behalf of the Company, as proceeds of security, enforcement of any right of set-off, or otherwise) is declared to be fraudulent or preferential in any respect, set aside, or required to be paid to a debtor in possession, trustee, receiver, or similar Person, then the obligation or part thereof originally intended to be satisfied will be deemed to be reinstated and outstanding as if such payment had not occurred.

"Parity Lien Representative" means:

(1) in the case of the Notes, the Trustee; or

(2) in the case of any other Series of Parity Lien Debt, the trustee, agent or representative of the holders of such Series of Parity Lien Debt who (a) is appointed as a Parity Lien Representative (for purposes related to the administration of the Security Documents) pursuant to the indenture, credit agreement or other agreement governing such Series of Parity Lien Debt, together with its successors in such capacity, and (b) has become a party to the Collateral Trust Agreement as a "Parity Lien Representative" by a joinder in the form required under the Collateral Trust Agreement.

"Parity Lien Secured Party" means any Parity Lien Representative, the Collateral Trustee and any holder of Parity Lien Obligations.

"Participant" means, with respect to the Depositary, Euroclear or Clearstream, a Person who has an account with the Depositary, Euroclear or Clearstream, respectively (and with respect to DTC, shall include Euroclear and Clearstream).

"Permitted Acquisition Indebtedness" means Indebtedness (including Disqualified Stock) of the Company or any of the Restricted Subsidiaries to the extent such Indebtedness was Indebtedness:

(1) of an acquired Person prior to the date on which such Person became a Restricted Subsidiary as a result of having been acquired and not incurred in contemplation of such acquisition; or

(2) of a Person that was merged, consolidated or amalgamated with or into the Company or a Restricted Subsidiary that was not incurred in contemplation of such merger, consolidation or amalgamation,

provided that on the date such Person became a Restricted Subsidiary or the date such Person was merged, consolidated and amalgamated with or into the Company or a Restricted Subsidiary, as applicable, after giving pro forma effect thereto,

(a) the Restricted Subsidiary or the Company, as applicable, would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Consolidated Coverage Ratio test described in Section 5.07; or

(b) the Consolidated Coverage Ratio for the Company would be greater than the Consolidated Coverage Ratio for the Company immediately prior to such transaction.

"Permitted Business Investment" means any Investment made in the ordinary course of, and of a nature that is or shall have become customary in, the Oil and Gas Business including investments or expenditures for actively exploiting, exploring for, acquiring, developing, producing, processing, gathering, marketing or transporting oil, natural gas or other Hydrocarbons and minerals through agreements, transactions, interests or arrangements which permit one to share risks or costs, comply with regulatory requirements regarding local ownership or satisfy other objectives customarily achieved through the conduct of the Oil and Gas Business jointly with third parties including:

(1) ownership interests in oil, natural gas, other Hydrocarbons and minerals properties, liquefied natural gas facilities, processing facilities, gathering systems, pipelines, storage facilities or related systems or ancillary real property interests;

(2) Investments in the form of or pursuant to operating agreements, working interests, royalty interests, mineral leases, processing agreements, farm-in agreements, farm-out agreements, contracts for the sale, transportation or exchange of oil, natural gas, other Hydrocarbons and minerals, production sharing agreements, participation agreements, development agreements, area of mutual interest agreements, unitization agreements, pooling agreements, joint bidding agreements, service contracts, joint venture agreements, partnership agreements (whether general or limited), subscription agreements, stock purchase agreements, stockholder agreements and other similar agreements (including for limited liability companies) with third parties; and

(3) direct or indirect ownership interests in drilling rigs and related equipment, including, without limitation, transportation equipment.

"Permitted Investment" means an Investment by the Company or any Restricted Subsidiary in:

(1) the Company, a Restricted Subsidiary or a Person which will, upon the making of such Investment, become a Restricted Subsidiary;

(2) another Person if as a result of such Investment such other Person becomes a Restricted Subsidiary or is merged or consolidated with or into, or transfers or conveys all or substantially all its assets to, the Company or a Restricted Subsidiary and, in each case, any Investment held by such Person; *provided* that such Investment was not acquired by such Person in contemplation of such acquisition, merger, consolidation or transfer;

(3) cash and Cash Equivalents;

(4) receivables owing to the Company or any Restricted Subsidiary created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; *provided*, *however*, that such trade terms may include such concessionary trade terms as the Company or any such Restricted Subsidiary deems reasonable under the circumstances;

(5) payroll, commission, travel, relocation and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;

(6) loans or advances to employees (other than executive officers) made in the ordinary course of business consistent with past practices of the Company or such Restricted Subsidiary;

(7) Capital Stock, obligations or securities received in settlement of debts (x) created in the ordinary course of business and owing to the Company or any Restricted Subsidiary or in satisfaction of judgments or (y) pursuant to any plan of reorganization or similar arrangement in a bankruptcy or insolvency proceeding;

(8) any Person as a result of the receipt of non-cash consideration from an Asset Disposition that was made pursuant to and in compliance with Section 5.11;

(9) Commodity Agreements, Currency Agreements, Interest Rate Agreements and related Hedging Obligations, which transactions or obligations are Incurred in compliance with Section 5.07;

(10) Guarantees issued in accordance with Section 5.07;

(11) Permitted Business Investments;

(12) any Person where such Investment was acquired by the Company or any of its Restricted Subsidiaries (a) in exchange for any other Investment or accounts receivable held by the Company or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable or (b) as a result of a foreclosure by the Company or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(13) any Person to the extent such Investments consist of prepaid expenses, negotiable instruments held for collection and lease, utility and workers' compensation, performance and other similar deposits made in the ordinary course of business by the Company or any Restricted Subsidiary;

(14) Guarantees of performance or other obligations (other than Indebtedness) arising in the ordinary course in the Oil and Gas Business, including obligations under oil and natural gas exploration, development, joint operating, and related agreements and licenses, concessions or operating leases related to the Oil and Gas Business;

(15) Investments in the Notes;

(16) Investments in existence on the Issue Date; and

(17) Investments by the Company or any of its Restricted Subsidiaries, together with all other Investments pursuant to this clause (17), in an aggregate amount outstanding at the time of such Investment not to exceed the greater of $100.0 million and 2.0% of the Company's Adjusted Consolidated Net Tangible Assets (with the Fair Market Value of such Investment being measured at the time such Investment is made and without giving effect to subsequent changes in value).

"Permitted Liens" means, with respect to any Person:

(1) Liens securing Priority Lien Debt, Parity Lien Debt or Junior Lien Debt;

(2) pledges or deposits by such Person under workers' compensation laws, unemployment insurance laws, social security or old age pension laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits (which may be secured by a Lien) to secure public or statutory obligations of such Person including letters of credit and bank guarantees required or requested by the United States, any State thereof or any foreign government or any subdivision, department, agency, organization or instrumentality of any of the foregoing in connection with any contract or statute (including lessee or operator obligations under statutes, governmental regulations, contracts or instruments related to the ownership, exploration and production of oil, natural gas, other hydrocarbons and minerals on state, federal or foreign lands or waters), or deposits of cash or United States government bonds to secure indemnity performance, surety or appeal bonds or other similar bonds to which such Person is a party, or deposits as security for contested taxes or import or customs duties or for the payment of rent, in each case Incurred in the ordinary course of business;

(3) statutory and contractual Liens of landlords and Liens imposed by law, including carriers', warehousemen's, mechanics', materialmen's and repairmen's Liens, in each case for sums not yet due or being contested in good faith by appropriate proceedings if a reserve or other appropriate provisions, if any, as shall be required by GAAP shall have been made in respect thereof;

(4) Liens for taxes, assessments or other governmental charges or claims not yet subject to penalties for non-payment or which are being contested in good faith by appropriate proceedings; *provided* that appropriate reserves, if any, required pursuant to GAAP have been made in respect thereof;

(5) Liens in favor of issuers of surety or performance bonds or bankers' acceptances issued pursuant to the request of and for the account of such Person in the ordinary course of its business;

(6) survey exceptions, encumbrances, ground leases, easements or reservations of, or rights of others for, licenses, rights of way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning, building codes or other restrictions (including, without limitation, minor defects or irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental to the conduct of the business of such Person or to the ownership of its properties which do not in the aggregate materially adversely affect the value of the assets of such Person and its Restricted Subsidiaries, taken as a whole, or materially impair their use in the operation of the business of such Person;

(7) Liens securing Bank Product Obligations and Hedging Obligations;

(8) leases, licenses, subleases and sublicenses of assets (including, without limitation, real property and intellectual property rights) which do not materially interfere with the ordinary conduct of the business of the Company or any of its Restricted Subsidiaries;

(9) prejudgment Liens and judgment Liens not giving rise to an Event of Default so long as such Lien is adequately bonded and any appropriate legal proceedings which may have been duly initiated for the review of such judgment have not been finally terminated or the period within which such proceedings may be initiated has not expired;

(10) Liens for the purpose of securing the payment of all or a part of the purchase price of, or Capitalized Lease Obligations, purchase money obligations or other payments Incurred to finance the acquisition, lease, improvement or construction of or repairs or additions to, assets or property acquired or constructed in the ordinary course of business; *provided* that:

(a) the aggregate principal amount of Indebtedness secured by such Liens is otherwise permitted to be Incurred under this Indenture and does not exceed the cost of the assets or property so acquired or constructed; and

(b) such Liens are created within 180 days following the later of the acquisition, lease, completion of improvements, construction, repairs or additions or commencement of full operation of the assets or property subject to such Lien and do not encumber any other assets or property of the Company or any Restricted Subsidiary other than such assets or property and assets affixed or appurtenant thereto;

(11) Liens arising solely by virtue of any statutory or common law provisions relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a depositary institution; *provided* that:

(a) such deposit account is not a dedicated cash collateral account and is not subject to restrictions against access by the Company in excess of those set forth by regulations promulgated by the Federal Reserve Board; and

(b) such deposit account is not intended by the Company or any Restricted Subsidiary to provide collateral to the depository institution;

(12) Liens arising from Uniform Commercial Code financing statement filings regarding operating leases entered into by the Company and its Restricted Subsidiaries in the ordinary course of business;

(13) Liens existing on the Issue Date (other than Liens described in another clause of this definition);

(14) Liens on property or shares of Capital Stock of a Person at the time such Person becomes a Subsidiary; *provided*, *however*, that such Liens are not created or Incurred in connection with, or in contemplation of, such other Person becoming a Subsidiary; *provided further*, *however*, that any such Lien may not extend to any other property owned by the Company or any Restricted Subsidiary (other than assets or property affixed or appurtenant thereto);

(15) Liens on property at the time the Company or any of its Subsidiaries acquired the property, including any acquisition by means of a merger or consolidation with or into the Company or any of its Subsidiaries; *provided*, *however*, that such Liens are not created or Incurred in connection with, or in contemplation of, such acquisition; *provided further*, *however*, that such Liens may not extend to any other property owned by the Company or any Restricted Subsidiary (other than assets or property affixed or appurtenant thereto);

(16) [Reserved];

(17) Liens securing Refinancing Indebtedness Incurred to refinance Indebtedness that was previously so secured, provided that any such Lien is limited to all or part of the same property or assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof) that secured (or, under the written arrangements under which the original Lien arose, could secure) the Indebtedness being refinanced or is in respect of property or assets that is the security for a Permitted Lien hereunder;

(18) any interest or title of a lessor under any Capitalized Lease Obligation or operating lease;*provided* that such Liens do not extend to any property or asset that is not leased property subject to such Capitalized Lease Obligation or operating lease;

(19) Liens in respect of Production Payments and Reserve Sales, which Liens shall be limited to the property that is the subject of such Production Payments and Reserve Sales;

(20) Liens arising under farm-out agreements, farm-in agreements, division orders, contracts for the sale, purchase, exchange, transportation, gathering or processing of Hydrocarbons, unitizations and pooling designations, declarations, orders and agreements, development agreements, joint venture agreements, partnership agreements, operating agreements, royalties, working interests, net profits interests, joint interest billing arrangements, participation agreements, production sales contracts, area of mutual interest agreements, gas balancing or deferred production agreements, injection, repressuring and recycling agreements, salt water or other disposal agreements, seismic or geophysical permits or agreements, and other agreements which are customary in the Oil and Gas Business; *provided*, *however*, in all instances that such Liens are limited to the assets that are the subject of the relevant agreement, program, order or contract;

(21) Liens on pipelines or pipeline facilities that arise by operation of law;

(22) Liens in favor of the Company or any Subsidiary Guarantor;

(23) deposits made in the ordinary course of business to secure liability to insurance carriers;

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

(25) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 5.07;*provided* that such Liens do not extend to any assets other than those that are the subject of such repurchase agreement;

(26) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(27) any (a) interest or title of a lessor or sublessor under any lease, liens reserved in oil, gas or other Hydrocarbons, minerals, leases for bonus, royalty or rental payments and for compliance with the terms of such leases; (b) restriction or encumbrance that the interest or title of such lessor or sublessor may be subject to (including, without limitation, ground leases or other prior leases of the demised premises, mortgages, mechanics' liens, tax liens, and easements); or (c) subordination of the interest of the lessee or sublessee under such lease to any restrictions or encumbrance referred to in the preceding clause (b);

(28) Liens upon specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(29) Liens arising under this Indenture in favor of the Trustee for its own benefit and similar Liens in favor of other trustees, agents and representatives arising under instruments governing Indebtedness permitted to be incurred under this Indenture, provided, however, that such Liens are solely for the benefit of the trustees, agents or representatives in their capacities as such and not for the benefit of the holders of such Indebtedness;

(30) Liens arising from the deposit of funds or securities in trust for the purpose of decreasing or defeasing Indebtedness so long as such deposit of funds or securities and such decreasing or defeasing of Indebtedness are permitted under Section 5.08;

(31) Liens in favor of collecting or payer banks having a right of setoff, revocation, or charge back with respect to money or instruments of the Company or any Subsidiary of the Company on deposit with or in possession of such bank; and

(32) Liens securing Indebtedness in an aggregate principal amount outstanding at any one time, added together with all other Indebtedness secured by Liens Incurred pursuant to this clause (32), not to exceed the greater of $50.0 million and 1.0% of the Company's Adjusted Consolidated Net Tangible Assets, as determined on the date of Incurrence of such Indebtedness after giving pro forma effect to such Incurrence and the application of the proceeds therefrom.

In each case set forth above, notwithstanding any stated limitation on the assets that may be subject to such Lien, a Permitted Lien on a specified asset or group or type of assets may include Liens on all improvements, additions and accessions thereto and all products and proceeds thereof (including dividends, distributions and increases in respect thereof).

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company, government or any agency or political subdivision thereof or any other entity.

"Pledged or Controlled Collateral" means any Shared Collateral that can be perfected by the possession or control of such Shared Collateral or of any deposit account, securities account or commodities account in which such Shared Collateral is held, and if such Shared Collateral or any such deposit account, securities account or commodities account is in fact in the possession or under the control of the Priority Lien Agent, or of agents or bailees of such Person.

"Predecessor Note" of any particular Note means every previous Note evidencing all or a portion of the same Indebtedness as that evidenced by such particular Note; and any Note authenticated and delivered under Section 3.08 in lieu of a lost, destroyed or stolen Note shall be deemed to evidence the same Indebtedness as the lost, destroyed or stolen Note.

"Preferred Stock," as applied to the Capital Stock of any corporation, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such corporation, over shares of Capital Stock of any other class of such corporation.

"Prior Notes Issue Date" means February 7, 2011.

"Priority Lien" means a Lien granted by the Company or any Subsidiary Guarantor in favor of the Priority Lien Agent, at any time, upon any property or assets of the Company or any Subsidiary Guarantor to secure Priority Lien Obligations (including Liens on such collateral under security documents associated with any Refinancing Credit Facility).

"Priority Lien Agent" means (a) the Senior Secured Credit Agreement Agent or (b) in the case of any Refinancing Credit Facility, the trustee, agent, collateral agent or other representative of the holders of such Priority Lien Debt who maintains the transfer register for such Priority Lien Debt and is appointed as a representative of the Priority Lien Debt (for purposes related to the administration of the security documents related to such Priority Lien Debt) pursuant to the Senior Secured Credit Agreement or other agreement governing such Priority Lien Debt.

"Priority Lien Collateral" means all "Collateral" (or comparable term) as defined in the Senior Secured Credit Agreement, Refinancing Credit Facility or any other Priority Lien Document, and any other assets of the Company or any Subsidiary Guarantor now or at any time hereafter subject to Liens that secure, but only to the extent securing, any Priority Lien Obligation.

"Priority Lien Debt" means Indebtedness of the Company and the Subsidiary Guarantors under the Senior Secured Credit Agreement (including letters of credit (with outstanding letters of credit being deemed to have a principal amount equal to the stated amount thereof) and reimbursement obligations with respect thereto) or any Refinancing Credit Facility, in each case, that is subject to the Intercreditor Agreement and incurred pursuant to clause (1) of the definition of "Permitted Debt," and secured under each applicable Secured Debt Document; *provided* that (1) in the case of any Refinancing Credit Facility, on or before the date on which any such Refinancing Credit Facility is entered into, the Indebtedness thereunder is designated by the Company, in an Officers' Certificate delivered to the Priority Lien Agent and the Collateral Trustee, as "Priority Lien Debt" for the purposes of the Secured Debt Documents, (2) if such Indebtedness is designated as "Priority Lien Debt," it cannot also be designated as Parity Lien Debt or Junior Lien Debt (or any combination of the three) and (3) such Indebtedness (other than any DIP Financing that is permitted by the Intercreditor Agreement) is *pari passu* in right of payment and Lien priority (it being understood that there may be different tranches of Priority Lien Debt with different maturities and amortization profiles, but the principal amount of Indebtedness under all such tranches must in all other respects be *pari passu* in right of payment and Lien priority). Any such Indebtedness (other than any such DIP Financing) that is not consistent in respect of right of payment and Lien priority with the foregoing requirement for *pari passu* treatment with the revolving credit loans under the Priority Lien Documents shall not constitute Priority Lien Debt.

"Priority Lien Documents" means the Senior Secured Credit Agreement, any Refinancing Credit Facility and any other Credit Facility pursuant to which any Priority Lien Debt is incurred and the documents pursuant to which Priority Liens are granted.

"Priority Lien Obligations" means the Priority Lien Debt and all other obligations in respect of (or in connection with) Priority Lien Debt, together with Hedging Obligations and Bank Product Obligations, in each case to the extent that such obligations are secured by Priority Liens.

"Priority Lien Secured Parties" means, at any time, the Priority Lien Agent, each lender or issuing bank under the Senior Secured Credit Agreement or Refinancing Credit Facility, each holder, provider or obligee of any Hedging Obligations and Bank Product Obligations that is a lender under the Senior Secured Credit Agreement or Refinancing Credit Facility or an Affiliate (as defined in the Senior Secured Credit Agreement) thereof and is a secured party (or a party entitled to the benefits of the security) under any Priority Lien Document, the beneficiaries of each indemnification obligation undertaken by the Company or any Subsidiary Guarantor under any Priority Lien Document, each other Person that provides letters of credit, guarantees or other credit support related thereto under any Priority Lien Document and each other holder of, or obligee in respect of, any Priority Lien Obligations, in each case to the extent designated as a secured party (or a party entitled to the benefits of the security) under any Priority Lien Document outstanding at such time.

"Private Placement Legend" means the legend set forth in Section 3.07(g)(1) to be placed on all Notes issued under this Indenture except where otherwise permitted by the provisions of this Indenture.

"Production Payments and Reserve Sales" means the grant or transfer by the Company or a Restricted Subsidiary to any Person of a royalty, overriding royalty, net profits interest, production payment (whether volumetric or dollar denominated), partnership or other interest in Oil and Gas Properties, reserves or the right to receive all or a portion of the production or the proceeds from the sale of production attributable to such properties where the holder of such interest has recourse solely to such production or proceeds of production, subject to the obligation of the grantor or transferor to operate and maintain, or cause the subject interests to be operated and maintained, in a reasonably prudent manner or other customary standard or subject to the obligation of the grantor or transferor to indemnify for environmental, title or other matters customary in the Oil and Gas Business, including any such grants or transfers pursuant to incentive compensation programs on terms that are reasonably customary in the Oil and Gas Business for geologists, geophysicists or other providers of technical services to the Company or a Restricted Subsidiary.

"Property" of any Person means any property or assets (whether real, personal, or mixed, tangible or intangible) of such Person.

"Rating Agency" means each of S&P and Moody's, or if S&P or Moody's or both shall not make a rating on the Notes publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Company which shall be substituted for S&P or Moody's, or both, as the case may be.

"Ratings Decline Period" means the period that (i) begins on the occurrence of a Change of Control and (ii) ends 90 days following consummation of such Change of Control.

"Refinancing Credit Facility" means any Credit Facility that re-funds, refinances or replaces the Senior Secured Credit Agreement or any other Refinancing Credit Facility, in each case, in whole and with all commitments under such Senior Secured Credit Agreement or other Refinancing Credit Facility terminated, or, to the extent permitted by the terms of the Senior Secured Credit Agreement or such Refinancing Credit Facility so re-funded, refinanced or replaced, in part.

"Refinancing Indebtedness" means Indebtedness that is Incurred to re-fund, refinance, replace, exchange, renew, repay, extend, prepay, redeem or retire (including pursuant to any defeasance or discharge mechanism) (collectively, "refinance" and "refinances" and "refinanced" shall have correlative meanings) any Indebtedness (including Indebtedness of the Company that refinances Indebtedness of any Restricted Subsidiary and Indebtedness of any Restricted Subsidiary that refinances Indebtedness of another Restricted Subsidiary, but excluding Indebtedness of a Subsidiary that is not a Restricted Subsidiary that refinances Indebtedness of the Company or a Restricted Subsidiary), including Indebtedness that refinances Refinancing Indebtedness; *provided*, *however*, that:

(1) (a) if the Stated Maturity of the Indebtedness being refinanced is earlier than the Stated Maturity of the Notes, the Refinancing Indebtedness has a Stated Maturity no earlier than the Stated Maturity of the Indebtedness being refinanced or (b) if the Stated Maturity of the Indebtedness being refinanced is later than the Stated Maturity of the Notes, the Refinancing Indebtedness has a Stated Maturity at least 91 days later than the Stated Maturity of the Notes;

(2) the Refinancing Indebtedness has an Average Life at the time such Refinancing Indebtedness is Incurred that is equal to or greater than the Average Life of the Indebtedness being refinanced;

(3) such Refinancing Indebtedness is Incurred in an aggregate principal amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the sum of the aggregate principal amount (or if issued with original issue discount, the aggregate accreted value) then outstanding of the Indebtedness being refinanced (plus, without duplication, any additional Indebtedness Incurred to pay interest, premiums or defeasance costs required by the instruments governing such existing Indebtedness and fees and expenses Incurred in connection therewith);

(4) if the Indebtedness being refinanced is subordinated in right of payment to the Notes or the Subsidiary Guarantee, such Refinancing Indebtedness is subordinated in right of payment to the Notes or the Subsidiary Guarantee on terms at least as favorable to the Holders as those contained in the documentation governing the Indebtedness being refinanced;

(5) if the Indebtedness being refinanced is secured by a Lien, the Lien of the Refinancing Indebtedness shall have no higher priority than the Indebtedness being refinanced; *provided* that Junior Lien Debt may be refinanced into Parity Lien Debt if permitted under the terms of the Note Documents;

(6) if the Indebtedness being refinanced is Convertible Secured Debt, such Refinancing Indebtedness shall be incurred substantially contemporaneously with and for the express purpose of refinancing such Convertible Secured Debt; and

(7) if the Indebtedness being refinanced is Non-Recourse Purchase Money Indebtedness or Indebtedness that refinanced Non-Recourse Purchase Money Indebtedness, such Refinancing Indebtedness satisfies clauses (a) and (b) of the definition of "Non-Recourse Purchase Money Indebtedness."

"Regulation S" means Regulation S promulgated under the Securities Act.

"Regulation S Global Note" means a Global Note in the form of Exhibit A hereto, bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of and registered in the name of the Depositary or its nominee, issued in a denomination equal to the outstanding principal amount of the Notes initially sold in reliance on Rule 903 of Regulation S.

"Regulations D, T, U, and X" mean Regulations D, T, U, and X of the Federal Reserve Board, as the same is from time to time in effect, and all official rulings and interpretations thereunder or thereof.

"Reporting Failure" means the failure of the Company to make available or otherwise deliver to the Trustee and each Holder of Notes, within the time periods specified in Section 5.03 (after giving effect to any grace period specified under Rule 12b-25 under the Exchange Act), the periodic reports, information, documents or other reports which the Company may be required to provide pursuant to such provision.

"Required Parity Lien Debtholders" means, at any time, the holders of a majority in aggregate principal amount of all Parity Lien Debt then outstanding, calculated in accordance with the provisions of Section 7.2 of the Collateral Trust Agreement. For purposes of this definition, Parity Lien Debt registered in the name of, or beneficially owned by, the Company or any Affiliate of the Company will be deemed not to be outstanding.

"Responsible Officer" when used with respect to the Trustee, means any officer within the corporate trust department of the Trustee (or any successor group of the Trustee) or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his or her knowledge of and familiarity with the particular subject.

"Restricted Definitive Note" means a Definitive Note bearing the Private Placement Legend.

"Restricted Global Note" means a Global Note bearing the Private Placement Legend.

- "Restricted Investment" means any Investment other than a Permitted Investment.

"Restricted Period" means the 40-day distribution compliance period, as defined in Rule 902(f) of Regulation S.

"Restricted Subsidiary" means any Subsidiary of the Company other than an Unrestricted Subsidiary.

"Rule 144" means Rule 144 promulgated under the Securities Act.

"Rule 144A" means Rule 144A promulgated under the Securities Act.

"Rule 903" means Rule 903 promulgated under the Securities Act.

"Rule 904" means Rule 904 promulgated under the Securities Act.

"S&P" means S&P Global Ratings, a division of S&P Global, Inc., or any successor to the rating agency business thereof.

"Sale/Leaseback Transaction" means an arrangement relating to property now owned or hereafter acquired whereby the Company or a Restricted Subsidiary transfers such property to a Person and the Company or a Restricted Subsidiary leases it from such Person.

"SEC" means the United States Securities and Exchange Commission as from time to time constituted, created under the Exchange Act, or if at any time after the execution of this Indenture such Commission is not existing and performing duties now assigned to it under the Securities Act and the Exchange Act, then the body performing such duties at such time.

"Secured Debt Documents" means the Priority Lien Documents, the Parity Lien Documents and the Junior Lien Documents.

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

"Security Documents" means the Collateral Trust Agreement, each joinder agreement required by the Collateral Trust Agreement, and all other security agreements, pledge agreements, collateral assignments, mortgages, deeds of trust, collateral agency agreements, control agreements or other grants or transfers for security executed and delivered by the Company or any Subsidiary Guarantor creating (or purporting to create) a Parity Lien upon Collateral in favor of the Collateral Trustee, in each case, as amended, modified, renewed, restated or replaced, in whole or in part, from time to time, in accordance with its terms.

"Senior Secured Credit Agreement" means the Sixth Amended and Restated Credit Agreement, dated as of September 28, 2018, among the Company, as Borrower, Wells Fargo Bank, National Association, as Administrative Agent, Bank of America, N.A. and JPMorgan Chase Bank, N.A., as Co-Syndication Agents, Barclays Bank PLC, BBVA Compass, Capital One, National Association, Royal Bank of Canada and The Bank of Nova Scotia, Houston Branch, as Co-Documentation Agents, and the lenders parties thereto from time to time, including any guarantees, collateral documents, instruments and agreements executed in

connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements, re-fundings or refinancings thereof with Credit Facilities that replace, re-fund or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, re-funding or refinancing facility that increases the amount borrowable thereunder or alters the maturity thereof (provided that such increase in borrowings is permitted under Section 5.07).

"Senior Secured Credit Agreement Agent" means, at any time, the Person serving at such time as the "Administrative Agent" under the Senior Secured Credit Agreement or any similar representative then most recently designated in accordance with the applicable provisions of the Senior Secured Credit Agreement, together with its successors in such capacity.

"Series of Junior Lien Debt" means, severally, each issue or series of Junior Lien Debt for which a single transfer register is maintained.

"Series of Parity Lien Debt" means, severally, the Notes and each other issue or series of Parity Lien Debt for which a single transfer register is maintained.

"Series of Priority Lien Debt" means, severally, the Senior Secured Credit Agreement and each other issue or series of Priority Lien Debt for which a single transfer register is maintained.

"Series of Secured Debt" means each Series of Priority Lien Debt, each Series of Parity Lien Debt and each Series of Junior Lien Debt.

"Shared Collateral" means, at any time, any property and assets wherever located and whether now owned or later acquired, in which Priority Lien Secured Parties under at least one Priority Lien Document and the Parity Lien Secured Parties and/or the Junior Lien Secured Parties under at least one Parity Lien Document and/or Junior Lien Document hold a security interest or Lien (or, in case of Priority Lien Secured Parties, are deemed to hold a Lien pursuant to Intercreditor Agreement) at such time. If, at any time, any portion of the Priority Lien Collateral under one or more Priority Lien Documents does not constitute Collateral in respect of one or more Series of Parity Lien Debt or Junior Lien Collateral in respect of one or more Series of Junior Lien Debt, then such portion of such Priority Lien Collateral shall constitute Shared Collateral only with respect to the Series of Parity Lien Debt or Junior Lien Debt, as applicable, for which it constitutes Collateral or Junior Lien Collateral and shall not constitute Shared Collateral for any Series of Parity Lien Debt or Junior Lien Debt which does not have a security interest in such collateral at such time.

"Significant Subsidiary" means any Restricted Subsidiary that would be a "Significant Subsidiary" of the Company within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC, as in effect on the Issue Date.

"Stated Maturity" means, with respect to any security, the date specified in such security as the fixed date on which the payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision, but shall not include any contingent

obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof.

"Subordinated Obligation" means any Indebtedness of the Company (whether outstanding on the Issue Date or thereafter Incurred) which is expressly subordinate in right of payment to the Notes pursuant to a written agreement.

"Subsidiary" of any Person means (a) any corporation, association or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total ordinary voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof (or Persons performing similar functions) or (b) any partnership, joint venture, limited liability company or similar entity of which more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, is, in the case of clauses (a) and (b), at the time owned or controlled, directly or indirectly, by (1) such Person, (2) such Person and one or more Subsidiaries of such Person or (3) one or more Subsidiaries of such Person. Unless otherwise specified herein, each reference to a Subsidiary (other than in this definition) will refer to a Subsidiary of the Company.

"Subsidiary Guarantee" means, individually, any Guarantee of payment of the Notes by a Subsidiary Guarantor pursuant to the terms of this Indenture and any supplemental indenture thereto, and, collectively, all such Guarantees.

"Subsidiary Guarantors" means any Subsidiary of the Company that is a guarantor of the Notes, including any Person that is required after the Issue Date to guarantee the Notes pursuant to Section 5.13, in each case until a successor replaces such Person pursuant to the applicable provisions of this Indenture and, thereafter, means such successor. For the avoidance of doubt, no Excluded Subsidiary shall be a Subsidiary Guarantor.

"Treasury Management Arrangement" means any agreement or other arrangement governing the provision of treasury or cash management services, including deposit accounts, overdraft, credit or debit card, funds transfer, automated clearinghouse, zero balance accounts, returned check concentration, controlled disbursement, lockbox, account reconciliation and reporting and trade finance services and other cash management services.

"Treasury Rate" means, as of any redemption date, the yield to maturity as of such redemption date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two (2) Business Days prior to the redemption date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the redemption date to June 17, 2022; *provided*, *however*, that, if the period from the redemption date to June 17, 2022 is less than one year, then the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

"Trustee" means UMB Bank, N.A. until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

"Uniform Commercial Code" or "UCC" shall mean the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York; *provided*, *however*, that if, by reason of mandatory provisions of any Legal Requirements, any or all of the attachment, perfection or priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

"Unrestricted Definitive Note" means one or more Definitive Notes that do not bear and are not required to bear the Private Placement Legend.

"Unrestricted Global Note" means a permanent Global Note substantially in the form of Exhibit A hereto, that bears the Global Note Legend and that has the "Schedule of Exchanges of Interests in the Global Note" attached thereto, and that is deposited with or on behalf of and registered in the name of the Depositary or its nominee, representing Notes that do not bear the Private Placement Legend.

"Unrestricted Subsidiary" means:

(1) any Subsidiary of the Company that at the time of determination shall be designated an Unrestricted Subsidiary by the Board of Directors of the Company in the manner provided below; and

(2) any Subsidiary of an Unrestricted Subsidiary.

The Board of Directors of the Company may designate any Subsidiary of the Company (including any newly acquired or newly formed Subsidiary or a Person becoming a Subsidiary through merger or consolidation or Investment therein) to be an Unrestricted Subsidiary only if:

(a) such Subsidiary or any of its Subsidiaries does not own any Capital Stock or Indebtedness of or have any Investment in, or own or hold any Lien on any property of, any other Subsidiary of the Company which is not a Subsidiary of the Subsidiary to be so designated or otherwise an Unrestricted Subsidiary;

(b) all the Indebtedness of such Subsidiary and its Subsidiaries shall, at the date of designation, and will at all times thereafter, consist of Non-Recourse Debt;

(c) on the date of such designation, such designation and the Investment of the Company or a Restricted Subsidiary in such Subsidiary complies with Section 5.08 of this Indenture;

(d) such Subsidiary is a Person with respect to which neither the Company nor any of its Restricted Subsidiaries has any direct or indirect obligation:

(i) to subscribe for additional Capital Stock of such Person; or

(ii) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results; and

(e) on the date such Subsidiary is designated an Unrestricted Subsidiary, such Subsidiary is not a party to any agreement, contract, arrangement or understanding with the Company or any Restricted Subsidiary with terms substantially less favorable to the Company or such Restricted Subsidiary than those that might have been obtained from Persons who are not Affiliates of the Company.

Any such designation by the Board of Directors of the Company shall be evidenced to the Trustee by filing with the Trustee a Board Resolution giving effect to such designation and an Officers' Certificate certifying that such designation complies with the foregoing conditions. If, at any time, any Unrestricted Subsidiary would fail to meet the foregoing requirements as an Unrestricted Subsidiary, it shall thereafter cease to be an Unrestricted Subsidiary for purposes of this Indenture and any Indebtedness of such Subsidiary shall be deemed to be Incurred as of such date. The Board of Directors of the Company may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that immediately after giving effect to such designation, no Default or Event of Default shall have occurred and be continuing or would occur as a consequence thereof and the Company could Incur at least $1.00 of additional Indebtedness under Section 5.07(a) on a pro forma basis taking into account such designation.

"Unsecured Pari Passu Indebtedness" means Indebtedness that ranks equally in right of payment to the Notes, in the case of the Company, or the Subsidiary Guarantees, in the case of any Subsidiary Guarantor (without giving effect to collateral arrangements), that is unsecured.

"Volumetric Production Payments" means production payment obligations recorded as deferred revenue in accordance with GAAP, together with all undertakings and obligations in connection therewith.

"Voting Stock" of an entity means all classes of Capital Stock of such entity then outstanding and normally entitled to vote in the election of members of such entity's Board of Directors.

"Wholly-Owned Subsidiary" means a Restricted Subsidiary, all of the Capital Stock of which (other than directors' qualifying shares) is owned by the Company or another Wholly-Owned Subsidiary.

Section 2.02. Other Definitions.

Term	Defined in
Act	Section 13.13
Affiliate Transaction	Section 5.12
Asset Disposition Offer	Section 5.11
Asset Disposition Offer Amount	Section 5.11
Asset Disposition Offer Period	Section 5.11
Asset Disposition Purchase Date	Section 5.11
Authentication Order	Section 3.02
Change of Control Offer	Section 5.15
Change of Control Payment	Section 5.15
Change of Control Payment Date	Section 5.15
Covenant Defeasance	Section 9.03
DTC	Section 3.01
Event of Default	Section 7.01
Excess Proceeds	Section 5.11
Funds in Trust	Section 9.04
Guarantor Supplemental Indenture	Section 5.13
IAI	Section 3.01
Initial Lien	Section 5.09
Institutional Accredited Investor Global Note	Section 3.01
Legal Defeasance	Section 9.02
Notes Obligations	Section 14.01
Paying Agent	Section 3.04
payment default	Section 7.01
Redemption Price Premium	Section 7.01
Registrar	Section 3.04
Restricted Payments	Section 5.08
Restricted Payment Basket	Section 5.08
Successor Company	Section 6.01
Suspended Covenants	Section 5.16
Suspension Period	Section 5.16

Section 2.03. Rules of Construction.

Unless the context otherwise requires:

(a) a term has the meaning assigned to it;

(b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(c) words in the singular include the plural, and in the plural include the singular;

(d) references to sections of or rules under the Securities Act shall be deemed to include substitute, replacement of successor sections or rules adopted by the SEC from time to time;

(e) "or" is not exclusive, and "including" means "including without limitation", "including but not limited to" or words of similar import; and

(f) the words "herein", "hereof" and "hereunder" and words of similar import shall be construed to refer to this Indenture in its entirety and not to any particular provision.

ARTICLE THREE
THE NOTES

Section 3.01. Form And Dating.

(a) General. The Notes and the Trustee's certificate of authentication shall be substantially in the form of Exhibit A hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rule or usage. Each Note shall be dated the date of its authentication. The Notes shall be issued in registered, global form without interest coupons and only shall be in minimum denominations of $2,000 and integral multiples of $1,000 in excess thereof.

The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this Indenture and the Company, any Subsidiary Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

(b) Global Notes. Notes issued in global form shall be substantially in the form of Exhibit A hereto (including the Global Note Legend thereon and the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Notes issued in definitive form shall be substantially in the form of Exhibit A hereto (but without the Global Note Legend thereon and without the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Each Global Note shall represent such of the outstanding Notes as shall be specified therein and each shall provide that it shall represent the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby shall be made by the Trustee, as Custodian, in accordance with instructions given by the Holder thereof as required by Section 3.07.

(c) Institutional Accredited Investor Global Notes. Notes resold after an initial resale thereof to QIBs in reliance on Rule 144A or an initial resale thereof in reliance on Regulation S to "institutional accredited investors" (as defined in Rule 501(a)(1), (2), (3) and (7) under the

Securities Act) who are not QIBs ("IAIs") in the United States of America in accordance with the procedures described herein will be initially issued in the form of a permanent Global Note (an "Institutional Accredited Investor Global Note") deposited with the Trustee, as Custodian, duly executed by the Company and authenticated by the Trustee as hereinafter provided. An Institutional Accredited Investor Global Note may be represented by more than one certificate, if so required by DTC's rules regarding the maximum principal amount to be represented by a single certificate. The aggregate principal amount of an Institutional Accredited Investor Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee, as Custodian, as hereinafter provided.

(d) Euroclear and Clearstream Procedures Applicable. The provisions of the "Operating Procedures of the Euroclear System" and "Terms and Conditions Governing Use of Euroclear" and the "General Terms and Conditions of Clearstream Banking" and "Customer Handbook" of Clearstream shall be applicable to transfers of beneficial interests in the Regulation S Global Notes that are held by Participants through Euroclear or Clearstream.

(e) Additional Notes. Notwithstanding anything else herein, with respect to any Additional Notes issued subsequent to the date of this Indenture, when the context requires all provisions of this Indenture shall be construed and interpreted to permit the issuance of such Additional Notes and to allow such Additional Notes to become fungible and interchangeable with the Initial Notes originally issued under this Indenture. Indebtedness represented by Additional Notes shall be subject to the covenants contained in this Indenture.

Section 3.02. Execution and Authentication.

(a) One Officer of the Company shall sign the Notes for the Company by manual or facsimile signature.

(b) The Trustee shall, upon a written order of the Company signed by an Officer of the Company (an "Authentication Order") delivered to the Trustee from time to time, authenticate and deliver Notes for original issue without limit as to the aggregate principal amount thereof, subject to compliance with Section 5.07, of which $446,675,000 will be issued on the date of this Indenture.

(c) If an Officer whose signature is on a Note no longer holds that office at the time such Note is authenticated, such Note shall nevertheless be valid.

(d) A Note shall not be valid until authenticated by the manual signature of the Trustee. Such signature shall be conclusive evidence that such Note has been authenticated under this Indenture.

(e) The aggregate principal amount of Notes which may be authenticated and delivered under this Indenture is unlimited.

(f) The Trustee may appoint an authenticating agent acceptable to the Company to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee may

do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with Holders or an Affiliate of the Company.

Section 3.03. Methods of Receiving Payments on the Notes.

If a Holder of Notes has given wire transfer instructions to the Company at least 10 Business Days before payment is due, the Company shall pay all principal, interest and premium, if any, on that Holder's Notes in accordance with those instructions. All other payments on Notes shall be made at the office or agency of the Paying Agent and Registrar unless the Company elects to make interest payments by check mailed to the Holders at their addresses set forth in the register of Holders. Payments of interest to the Trustee as Paying Agent, if the Trustee then acts as Paying Agent, with respect to any Interest Payment Date shall be made by the Company in immediately available funds for receipt by the Trustee no later than 1:00 p.m. New York time on such Interest Payment Date.

Section 3.04. Registrar and Paying Agent.

(a) The Company shall maintain an office or agency where Notes may be presented for registration of transfer or for exchange ("Registrar"), which initially will be the office of the Trustee located at 5555 San Felipe, Suite 870, Houston, Texas 77056 and an office or agency where Notes may be presented for payment ("Paying Agent"), which initially will be the office of the Trustee located at 5555 San Felipe, Suite 870, Houston, Texas 77056. The Registrar shall keep a register of the Notes and of their transfer and exchange. The Company may appoint one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrar and the term "Paying Agent" includes any additional paying agent. The Company may change any Paying Agent or Registrar without prior notice to any Holder. The Company shall notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Company fails to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Company or any of its Subsidiaries may act as Paying Agent or Registrar.

(b) The Company initially appoints DTC to act as Depositary with respect to the Global Notes.

(c) The Company initially appoints the Trustee to act as the Registrar and Paying Agent.

Section 3.05. Paying Agent to Hold Money in Trust.

The Company shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent shall hold in trust for the benefit of the Holders or the Trustee all money held by the Paying Agent for the payment of principal or premium, if any, or interest on the Notes, and shall notify the Trustee of any default by the Company in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Company at any time may require a Paying Agent to pay all money held

by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Company or one of its Subsidiaries) shall have no further liability for the money. If the Company or any of its Subsidiaries acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Upon any bankruptcy or reorganization proceedings relating to the Company, the Trustee shall serve as Paying Agent for the Notes.

Section 3.06 Holder Lists.

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders. If the Trustee is not the Registrar, the Company shall furnish to the Trustee at least five Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders of Notes with respect to such Interest Payment Date.

Section 3.07. Transfer and Exchange.

(a) Transfer and Exchange of Global Notes. A Global Note may be transferred, as a whole and not in part, by the Depositary to a nominee of the Depositary, by a nominee of the Depositary to the Depositary or to another nominee of the Depositary, or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary. All Global Notes shall be exchanged by the Company for Definitive Notes only if (i) the Company delivers to the Trustee notice from the Depositary that the Depositary is unwilling or unable to continue to act as Depositary or that it is no longer a clearing agency registered under the Exchange Act and, in either case, a successor Depositary is not appointed by the Company within 90 days after the date of such notice from the Depositary, (ii) the Company executes and delivers to the Trustee and Registrar an Officers' Certificate stating that such Global Notes shall be so exchangeable, provided that the Company shall not deliver such a certificate under this clause (ii) absent the Company's determination of a change in tax law that permits the Global Notes to be exchangeable for Definitive Notes without causing the Notes to be treated as unregistered for the purposes of Code Section 163(f), as provided by IRS Notice 2012-20 or any similar guidance issued under Code Section 163(f), (iii) there has occurred and is continuing a Default or Event of Default with respect to the Notes and the Depositary shall have requested the issuance of Definitive Notes or (iv) the Company at any time determines not to have the Notes represented by the Global Notes. Upon the occurrence of any of the preceding events in clauses (i), (ii), (iii) or (iv) above, Definitive Notes shall be issued in such names as the Depositary shall instruct the Trustee. Global Notes also may be exchanged or replaced, in whole or in part, as provided in Sections 3.08 and 3.11. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 3.07 or Section 3.08 or 3.11, shall be authenticated and delivered in the form of, and shall be, a Global Note. A Global Note may not be exchanged for another Note other than as provided in this Section 3.07; however, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 3.07 (b), (c) or (f) hereof.

(b) Transfer and Exchange of Beneficial Interests in the Global Notes. The transfer and exchange of beneficial interests in the Global Notes shall be effected through the Depositary, in accordance with the provisions of this Indenture and the Applicable Procedures. Beneficial interests in the Restricted Global Notes shall be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Transfers of beneficial interests in the Global Notes also shall require compliance with either clause (1) or (2) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(1) (A) Transfer of Beneficial Interests in the Same Global Note. Beneficial interests in any Restricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Note in accordance with the transfer restrictions set forth in the Private Placement Legend and any Applicable Procedures; provided, however, that prior to the expiration of the Restricted Period, transfers of beneficial interests in the Regulation S Global Note may only be made as set forth in Section 3.07(b)(1)(B) below. Beneficial interests in any Unrestricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note. Except as may be required by any Applicable Procedures, no written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 3.07(b)(1).

(B) The following provisions shall apply with respect to any proposed transfer of a beneficial interest in a Regulation S Global Note or any Definitive Note issued in exchange therefor prior to the expiration of the Restricted Period: (i) a transfer thereof to a QIB shall be made upon the representation of the transferee, in the form of a certificate in the form of Exhibit B-1 hereto, including the certifications in item (1) thereof, that it is purchasing the Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon its foregoing representations in order to claim the exemption from registration provided by Rule 144A; (ii) a transfer thereof to an IAI shall be made upon receipt by the Trustee or its agent of a certificate substantially in the form set forth in Exhibit B-2 hereto from the proposed transferee and, if requested by the Company or the Trustee, the delivery of an Opinion of Counsel, certification and/or other information satisfactory to each of them; and (iii) a transfer thereof to a Non-U.S. Person shall be made upon receipt by the Trustee or its agent of a certificate substantially in the form set forth in Exhibit B-1 hereto, including the certifications in item (2) thereof from the transferor and, if requested by the Company or the Trustee, delivery of an Opinion of Counsel, certification and/or other information satisfactory to each of them.

After the expiration of the Restricted Period, beneficial interests in the Regulation S Global Note or Definitive Notes issued in exchange therefor may be transferred without requiring the certifications set forth in Exhibits B-1 and B-2 or any additional certification.

(2) All Other Transfers and Exchanges of Beneficial Interests in Global Notes. In connection with all transfers and exchanges of beneficial interests in the Global Notes that are not subject to Section 3.07(b)(1) above, the transferor of such beneficial interest must deliver to the Registrar either:

(A) (1) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase; or

(B) (1) if permitted under Section 3.07(a) hereof, a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to cause to be issued a Definitive Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given by the Depositary to the Registrar containing information regarding the Person in whose name such Definitive Note shall be registered to effect the transfer or exchange referred to in (1) above. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Indenture and the Notes or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount at maturity of the relevant Global Notes pursuant to Section 3.07(h) hereof.

(3) Transfer of Beneficial Interests to Another Restricted Global Note. A beneficial interest in any Restricted Global Note may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Restricted Global Note if the transfer complies with the requirements of Section 3.07(b)(2) above and the Registrar receives the following:

(A) if the transferee shall take delivery in the form of a beneficial interest in the 144A Global Note, then the transferor must deliver a certificate in the form of Exhibit B-1 hereto, including the certifications in item (1) thereof or, if permitted by the Applicable Procedures, item (3) thereof; or

(B) if the transferee shall take delivery in the form of a beneficial interest in the Regulation S Global Note, as the case may be, then the transferor must deliver a certificate in the form of Exhibit B-1 hereto, including the certifications in item (2) thereof.

(4) Transfer and Exchange of Beneficial Interests in a Restricted Global Note for Beneficial Interests in the Unrestricted Global Note. A beneficial interest in any Restricted Global Note may be exchanged by any Holder thereof for a beneficial interest in an Unrestricted Global Note or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note if the exchange or transfer

complies with the requirements of Section 3.07(b)(2) above and the Registrar receives the following:

(A) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(a) thereof; or

(B) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, a certificate from such Holder in the form of Exhibit B-1 hereto, including the certifications in item (4) thereof;

and, in each such case, if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

If any such transfer is effected pursuant to this Section 3.07(b)(4) at a time when an Unrestricted Global Note has not yet been issued, the Company shall issue and, upon receipt of an Authentication Order in accordance with Section 3.02 hereof, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred pursuant to this Section 3.07(b)(4).

(5) Transfer or Exchange of Beneficial Interests in an Unrestricted Global Note for Beneficial Interests in a Restricted Global Note Prohibited. Beneficial interests in an Unrestricted Global Note cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Restricted Global Note.

(c) Transfer or Exchange of Beneficial Interests for Definitive Notes.

(1) Beneficial Interests in Restricted Global Notes to Restricted Definitive Notes. Subject to Section 3.07(a), if any holder of a beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Restricted Definitive Note, then, upon receipt by the Registrar of the following documentation:

(A) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (2)(a) thereof;

(B) if such beneficial interest is being transferred to a QIB in accordance with Rule 144A under the Securities Act, a certificate to the effect set forth in Exhibit B-1 hereto, including the certifications in item (1) thereof;

(C) if such beneficial interest is being transferred to a Non-U.S. Person in an offshore transaction (as defined in Section 902(h) of Regulation S) in accordance with Rule 903 or Rule 904 under the Securities Act, a certificate to the effect set forth in Exhibit B-1 hereto, including the certifications in item (2) thereof;

(D) if such beneficial interest is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144 under the Securities Act, a certificate to the effect set forth in Exhibit B-1 hereto, including the certifications in item (3)(a) thereof;

(E) if such beneficial interest is being transferred to the Company or any of its Subsidiaries, a certificate to the effect set forth in Exhibit B-1 hereto, including the certifications in item (3)(b) thereof;

(F) if such beneficial interest is being transferred pursuant to an effective registration statement under the Securities Act, a certificate to the effect set forth in Exhibit B-1 hereto, including the certifications in item (3)(c) thereof; or

(G) if such beneficial interest is transferred to an IAI in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (B) through (D) above, a certificate to the effect set forth in Exhibit B-2 hereto from the proposed transferee and, if requested by the Company or Trustee, the delivery of an Opinion of Counsel, certification and/or other information satisfactory to each of them,

the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 3.07(h), and the Company shall execute and the Trustee shall authenticate and deliver to the Person designated in the instructions a Definitive Note in the appropriate principal amount. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 3.07(c)(1) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from the Depositary and the Participant or Indirect Participant. The Trustee shall deliver such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 3.07(c)(1) shall bear the Private Placement Legend and shall be subject to all restrictions on transfer contained therein.

(2) Beneficial Interests in Restricted Global Notes to Unrestricted Definitive Notes. Subject to Section 3.07(a), a holder of a beneficial interest in a Restricted Global Note may exchange such beneficial interest for an Unrestricted Definitive Note or may transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note only if the Registrar receives the following:

(A) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Definitive Note that does not bear the Private Placement Legend, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(b) thereof; or

(B) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a Definitive Note that does not bear the Private Placement Legend, a certificate from such Holder in the form of Exhibit B-1 hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this Section 3.07(c)(2), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

Upon satisfaction of any of the conditions of this Section 3.07(c)(2), the Company shall execute and, upon receipt of an Authentication Order in accordance with Section 3.02, the Trustee shall authenticate and deliver a Definitive Note that does not bear the Private Placement Legend in the appropriate principal amount to the Person designated by the holder of such beneficial interest in instructions delivered to the Registrar by the Depositary and the applicable Participant or Indirect Participant on behalf of such holder, and the Trustee shall reduce or cause to be reduced in a corresponding amount pursuant to Section 3.07(h), the aggregate principal amount of the applicable Restricted Global Note.

(3) Beneficial Interests in Unrestricted Global Notes to Unrestricted Definitive Notes. If any holder of a beneficial interest in an Unrestricted Global Note proposes to exchange such beneficial interest for a Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Definitive Note, then, upon satisfaction of the conditions set forth in Section 3.07(b)(2), the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 3.07(h), and the Company shall execute and the Trustee shall authenticate and deliver to the Person designated in the instructions a Definitive Note in the appropriate principal amount. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 3.07(c)(3) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from the Depositary and the Participant or Indirect Participant. The Trustee shall deliver such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 3.07(c)(3) shall not bear the Private Placement Legend.

(d) Transfer and Exchange of Definitive Notes for Beneficial Interests.

(1) Restricted Definitive Notes to Beneficial Interests in Restricted Global Notes. If any Holder of a Restricted Definitive Note proposes to exchange such Note for a

beneficial interest in a Restricted Global Note or to transfer such Restricted Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in a Restricted Global Note, then, upon receipt by the Registrar of the following documentation:

(A) if the Holder of such Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (2)(b) thereof;

(B) if such Restricted Definitive Note is being transferred to a QIB in accordance with Rule 144A under the Securities Act, a certificate to the effect set forth in Exhibit B-1 hereto, including the certifications in item (1) thereof;

(C) if such Restricted Definitive Note is being transferred to a Non-U.S. Person in an offshore transaction (as defined in Rule 902(k) of Regulation S) in accordance with Rule 903 or Rule 904 under the Securities Act, a certificate to the effect set forth in Exhibit B-1 hereto, including the certifications in item (2) thereof;

(D) if such Restricted Definitive Note is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144 under the Securities Act, a certificate to the effect set forth in Exhibit B-1 hereto, including the certifications in item (3)(a) thereof;

(E) if such Restricted Definitive Note is being transferred to the Company or any of its Subsidiaries, a certificate to the effect set forth in Exhibit B-1 hereto, including the certifications in item (3)(b) thereof;

(F) if such Restricted Definitive Note is being transferred pursuant to an effective registration statement under the Securities Act, a certificate to the effect set forth in Exhibit B-1 hereto, including the certifications in item (3)(c) thereof; or

(G) if such Restricted Definitive Note is being transferred to an IAI in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (B) through (D) above, a certificate to the effect set forth in Exhibit B-2 hereto from the proposed transferee; and

if requested by the Company or Trustee with respect to any transfer described in this Section 3.07(d)(1), the delivery of an Opinion of Counsel, certification and/or other information satisfactory to each of them, the Trustee shall cancel the Restricted Definitive Note, increase or cause to be increased the aggregate principal amount of, in the case of clause (A) above, the appropriate Restricted Global Note, in the case of clause (B) above, the 144A Global Note, and in the case of clause (C) above, the Regulation S Global Note.

(2) Restricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes. A Holder of a Restricted Definitive Note may exchange such Note for a beneficial interest

in an Unrestricted Global Note or transfer such Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note only if the Registrar receives the following:

(A) if the Holder of such Definitive Notes proposes to exchange such Notes for a beneficial interest in the Unrestricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(c) thereof; or

(B) if the Holder of such Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of a beneficial interest in the Unrestricted Global Note, a certificate from such Holder in the form of Exhibit B-1 hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this Section 3.07(d)(2), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

Upon satisfaction of any of the conditions of any of the clauses of this Section 3.07(d)(2), the Trustee shall cancel the Definitive Notes and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Note.

(3) Unrestricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes. A Holder of an Unrestricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note at any time. Upon receipt of a request for such an exchange or transfer, the Trustee shall cancel the applicable Unrestricted Definitive Note and increase or cause to be increased in a corresponding amount the aggregate principal amount of one of the Unrestricted Global Notes pursuant to Section 3.07(a);

(4) Transfer or Exchange of Unrestricted Definitive Notes to Beneficial Interests in Restricted Global Notes Prohibited. An Unrestricted Definitive Note may not be exchanged for, or transferred to Persons who take delivery thereof in the form of, beneficial interests in a Restricted Global Note.

(5) Issuance of Unrestricted Global Notes. If any such exchange or transfer from a Definitive Note to a beneficial interest is effected pursuant to subparagraphs (2)(A), (2)(B) or (3) above at a time when an Unrestricted Global Note has not yet been issued, the Company shall issue and, upon receipt of an Authentication Order in accordance with Section 3.02, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of Definitive Notes so transferred.

(e) Transfer and Exchange of Definitive Notes for Definitive Notes. Upon request by a Holder of Definitive Notes and such Holder's compliance with the provisions of this Section 3.07(e), the Registrar shall register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder shall present or surrender to the Registrar the Definitive Notes duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder shall provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 3.07(e).

(1) Restricted Definitive Notes to Restricted Definitive Notes. Any Restricted Definitive Note may be transferred to and registered in the name of Persons who take delivery thereof in the form of a Restricted Definitive Note if the Registrar receives the following:

(A) if the transfer shall be made pursuant to Rule 144A, then the transferor must deliver a certificate in the form of Exhibit B-1 hereto, including the certifications in item (1) thereof;

(B) if the transfer shall be made pursuant to Rule 903 or Rule 904, then the transferor must deliver a certificate in the form of Exhibit B-1 hereto, including the certifications in item (2) thereof; and

(C) if the transfer shall be made pursuant to any other exemption from the registration requirements of the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B-1 hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable.

(2) Restricted Definitive Notes to Unrestricted Definitive Notes. Any Restricted Definitive Note may be exchanged by the Holder thereof for an Unrestricted Definitive Note or transferred to a Person or Persons who take delivery thereof in the form of an Unrestricted Definitive Note only if the Registrar receives the following:

(A) if the Holder of such Restricted Definitive Notes proposes to exchange such Notes for an Unrestricted Definitive Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(d) thereof; or

(B) if the Holder of such Restricted Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such Holder in the form of Exhibit B-1 hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this Section 3.07(e)(2), if the Registrar so requests, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

Upon satisfaction of the conditions of any of the clauses of this Section 3.07(e)(2), the Trustee shall cancel the prior Restricted Definitive Note and the Company shall execute, and upon receipt of an Authentication Order in accordance with Section 3.02 hereof, the Trustee shall authenticate and deliver an Unrestricted Definitive Note in the appropriate aggregate principal amount to the Person designated by the Holder of such prior Restricted Definitive Note in instructions delivered to the Registrar by such Holder.

(3) Unrestricted Definitive Notes to Unrestricted Definitive Notes. A Holder of Unrestricted Definitive Notes may transfer such Notes to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note. Upon receipt of a request to register such a transfer, the Registrar shall register the Unrestricted Definitive Notes pursuant to the instructions from the Holder thereof.

(f) [Reserved.]

(g) Legends. The following legends shall appear on the face of all Global Notes and Definitive Notes issued under this Indenture unless specifically stated otherwise in the applicable provisions of this Indenture.

(1) Private Placement Legend. Except as permitted below, each Global Note and each Definitive Note (and all Notes issued in exchange therefor or substitution thereof) shall bear the legend in substantially the following form:

[Restricted Notes Legend]

THIS NOTE (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THIS NOTE MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS NOTE IS HEREBY NOTIFIED THAT THE SELLER OF THIS NOTE MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. THE HOLDER OF THIS NOTE AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) THIS NOTE MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (I) IN THE UNITED STATES TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (II) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 904 UNDER THE SECURITIES ACT, (III) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE) OR (IV) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (I) THROUGH (V) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS NOTE

FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE. WITH RESPECT TO A TRANSFER DESCRIBED IN CLAUSE (II) ABOVE, THE HOLDER OF THIS NOTE ACKNOWLEDGES THAT THE COMPANY OR THE TRUSTEE MAY REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO THE COMPANY OR THE TRUSTEE.

Notwithstanding the foregoing, any Global Note or Definitive Note issued pursuant to subparagraph (b)(4), (c)(2), (c)(3), (d)(2), (d)(3), (e)(2) or (e)(3) of this Section 3.07 (and all Notes issued in exchange therefor or substitution thereof) (and any note not required by law to have such a legend), shall not bear the Private Placement Legend.

In addition, the foregoing legend may be adjusted for future issuances in accordance with applicable Legal Requirements.

(2) Global Note Legend. Each Global Note shall bear a legend in substantially the following form:

[Global Note Legend]

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) TO THE COMPANY OR ITS AGENT FOR REGISTRATION OR TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR TO SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY OR SUCH OTHER REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN. TRANSFERS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF CEDE & CO. OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE.

(h) Cancellation and/or Adjustment of Global Notes. At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note shall be returned to or retained and canceled by the Trustee in accordance with Section 3.12. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who shall take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note shall be reduced accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who shall take delivery thereof in the form of a beneficial interest in another Global Note, such

other Global Note shall be increased accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(i) General Provisions Relating to Transfers and Exchanges.

(1) To permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate Global Notes and Definitive Notes upon the Company's order or at the Registrar's request.

(2) No service charge shall be made to a holder of a beneficial interest in a Global Note or to a Holder of a Definitive Note for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 3.11, 4.06, 5.11, 5.15 and 10.05).

(3) The Registrar shall not be required to register the transfer of or exchange any Note selected for redemption in whole or in part.

(4) All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes shall be the valid and legally binding obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Global Notes or Definitive Notes surrendered upon such registration of transfer or exchange.

(5) The Company shall not be required to (A) issue, register the transfer of, or exchange any Notes during a period beginning at the opening of business 15 days before the day of any selection of Notes for redemption under Section 4.02 and ending at the close of business on the day of selection, (B) register the transfer of or exchange any Note so selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part or (C) register the transfer of or exchange a Note between a record date and the next succeeding Interest Payment Date.

(6) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Company may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Company shall be affected by notice to the contrary.

(7) The Trustee shall authenticate Global Notes and Definitive Notes in accordance with the provisions of Section 3.02.

(8) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 3.07 to effect a registration of transfer or exchange may be submitted by facsimile or other electronic delivery (including the delivery of

a .pdf of such document) with the original to follow by first class mail or overnight delivery service.

Section 3.08. Replacement Notes.

(a) If any mutilated Note is surrendered to the Trustee or the Company and the Trustee receives evidence to their satisfaction of the destruction, loss or theft of any Note, the Company shall issue and the Trustee, upon receipt of an Authentication Order, shall authenticate a replacement Note if the Trustee's requirements are met. If required by the Trustee or the Company, an indemnity bond must be supplied by the Holder that is sufficient in the judgment of the Trustee and the Company to protect the Company, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. The Company or the Trustee may charge for their expenses in replacing a Note. If, after the delivery of such replacement Note, a protected purchaser of the original Note in lieu of which such replacement Note was issued presents for payment or registration such original Note, the Trustee shall be entitled to recover such replacement Note from the Person to whom it was delivered or any Person taking therefrom, except a protected purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the Company, the Trustee and any Agent in connection therewith.

(b) Subject to the provisions of the final sentence of the preceding paragraph, every replacement Note is an additional obligation of the Company and shall be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

Section 3.09. Outstanding Notes.

(a) The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions of this Indenture, and those described in this Section 3.09 as not outstanding. Except as set forth in Section 3.10, a Note does not cease to be outstanding because the Company or an Affiliate of the Company holds the Note.

(b) If a Note is replaced pursuant to Section 3.08, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a protected purchaser.

(c) If the principal amount of any Note is considered paid under Section 5.01, it ceases to be outstanding and interest on it ceases to accrue.

(d) If the Paying Agent (other than the Company, a Subsidiary of the Company or an Affiliate of any of the foregoing) holds as of 1:00 p.m. New York time, on a redemption date, repurchase date or other maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes shall be deemed to be no longer outstanding and shall cease to accrue interest.

Section 3.10. Treasury Notes.

In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Company, or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company, shall be considered as though not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes that the Trustee knows are so owned shall be so disregarded.

Section 3.11. Temporary Notes.

(a) Until certificates representing Notes are ready for delivery, the Company may prepare and the Trustee, upon receipt of an Authentication Order, shall authenticate temporary Notes. Temporary Notes shall be substantially in the form of Definitive Notes but may have variations that the Company considers appropriate for temporary Notes and as shall be reasonably acceptable to the Trustee. Without unreasonable delay, the Company shall prepare and the Trustee shall authenticate Definitive Notes in exchange for temporary Notes.

(b) Holders of temporary Notes shall be entitled to all of the benefits of this Indenture.

Section 3.12. Cancellation.

The Company at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and shall dispose of canceled Notes in accordance with its procedures for the disposition of canceled securities in effect as of the date of such disposition (subject to the record retention requirement of the Exchange Act). Certification of the disposition of all canceled Notes shall be delivered to the Company. The Company may not issue new Notes to replace Notes that they have paid or that have been delivered to the Trustee for cancellation.

Section 3.13. Defaulted Interest.

If the Company defaults in a payment of interest on the Notes, it shall pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest, to the Persons who are Holders on the record date for the interest payment or a subsequent special record date, in each case at the rate provided in the Notes and in Section 5.01. The Company shall notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Note and the date of the proposed payment. The Company shall fix or cause to be fixed each such special record date and payment date, provided that no such special record date shall be less than 10 days prior to the related payment date for such defaulted interest. At least 15 days before the special record date, the Company (or, upon the written request of the Company, the Trustee in the name and at the expense of the Company) shall mail or cause to be mailed to

Holders a notice that states the special record date, the related payment date and the amount of such interest to be paid.

Section 3.14. CUSIP Numbers.

The Company in issuing the Notes may use "CUSIP" or "ISIN" numbers (if then generally in use), and, if so, the Trustee shall use such numbers in notices of redemption as a convenience to Holders; *provided,* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company shall promptly notify the Trustee of any change in the "CUSIP" or "ISIN" numbers.

Section 3.15. Issuance of Additional Notes.

(a) The Company shall be entitled, subject to its compliance with Section 5.07, to issue Additional Notes under this Indenture.

(b) With respect to any Additional Notes, the Company shall set forth in the related Authentication Order the following information:

(1) the aggregate principal amount of such Additional Notes to be authenticated and delivered pursuant to this Indenture;

(2) the issue date and the CUSIP and/or ISIN number of such Additional Notes; and

(3) whether such Additional Notes shall be subject to the restrictions on transfer set forth in Section 3.07 hereof relating to Restricted Global Notes and Restricted Definitive Notes.

ARTICLE FOUR
REDEMPTION

Section 4.01. Notice to Trustee.

If the Company elects to redeem Notes pursuant to the optional redemption provisions of Section 4.07, it shall furnish to the Trustee, at least 5 days (unless the Trustee consents to a shorter period in the sole determination of the Trustee) before giving a notice of redemption pursuant to Section 4.03, an Officers' Certificate setting forth (i) the clause of this Indenture pursuant to which the redemption shall occur, (ii) the redemption date, (iii) the principal amount of Notes to be redeemed and (iv) the redemption price, if then determined and otherwise the method of its determination.

Section 4.02. Selection of Notes to Be Redeemed.

(a) If fewer than all of the Notes are to be redeemed at any time, the Trustee shall select the Notes to be redeemed among the Holders of the Notes in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed or, if the Notes are not so listed, on a pro rata basis, by lot or in accordance with any other method the Trustee in its sole discretion deems fair and reasonable (subject to the procedures of DTC or any other Depositary).

(b) The Trustee shall promptly notify the Company in writing of the Notes selected for redemption and, in the case of any Note selected for partial redemption, the principal amount at maturity thereof to be redeemed. No Notes in amounts of $2,000 or less shall be redeemed in part. The Trustee may select for redemption portions of the principal of Notes that have denominations larger than $2,000. Notes and portions of Notes selected shall be in amounts of $2,000 or whole multiples of $1,000 in excess thereof; except that if all of the Notes of a Holder are to be redeemed, the entire outstanding amount of Notes held by such Holder, even if not a multiple of $1,000, shall be redeemed. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption also apply to portions of Notes called for redemption.

Section 4.03. Notice of Redemption.

(a) At least 30 days but not more than 60 days before a redemption date, the Company shall mail or cause to be mailed, by first class mail, a notice of redemption to each Holder whose Notes are to be redeemed at its registered address and send a copy to the Trustee at the same time.

The notice shall identify the Notes (including CUSIP or ISIN number(s)) to be redeemed and shall state:

(1) the redemption date;

(2) the redemption price, if then determined and otherwise the method of its determination;

(3) if any Note is being redeemed in part, the portion of the principal amount of such Note to be redeemed and that, after the redemption date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion of the original Note shall be issued in the name of the Holder of the original Note upon cancellation of the partially redeemed original Note;

(4) the name and address of the Paying Agent;

(5) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price and become due on the date fixed for redemption;

(6) that, unless the Company defaults in making such redemption payment, interest, if any, on Notes called for redemption ceases to accrue on and after the redemption date;

(7) the paragraph of the Notes and/or section of this Indenture pursuant to which the Notes called for redemption are being redeemed; and

(8) that no representation is made as to the correctness or accuracy of the CUSIP or ISIN number, if any, listed in such notice or printed on the Notes.

(b) At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at its expense; provided, however, that the Company shall have delivered to the Trustee, as provided in Section 4.01, an Officers' Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph. The notice, if mailed in the manner provided herein shall be presumed to have been given, whether or not the Holder receives such notice.

(c) Notices of redemption may be subject to one or more conditions precedent specified in the notice of redemption. If a notice of redemption is subject to the satisfaction of one or more conditions precedent, the related notice shall describe each such condition, and if applicable, shall state that, in the Company's discretion, the redemption date may be delayed until such time as any or all such conditions shall be satisfied or waived (provided that in no event shall such redemption date be delayed to a date later than 60 days after the date on which such notice was sent), or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied or waived by the redemption date, or by the redemption date as so delayed. The Company shall provide written notice of the satisfaction or waiver of such conditions, the delay of such redemption date or the rescission of such notice of redemption to the Trustee no later than the close of business one Business Day prior to the redemption date, and the Trustee shall provide such notice to each holder of the Notes in the same manner in which the notice of redemption was given. Upon receipt of such notice of the delay of such redemption date or the rescission of such notice of redemption, such redemption date shall be automatically delayed or such notice of redemption shall be automatically rescinded, as applicable, and the redemption of the Notes shall be automatically delayed or rescinded and cancelled, as applicable, as provided in such notice.

Section 4.04. Effect of Notice of Redemption.

Once notice of redemption is mailed in accordance with Section 4.03, Notes called for redemption shall become irrevocably due and payable (subject to the provisions of Section 4.03 hereof) on the redemption date at the redemption price.

Section 4.05. Deposit of Redemption Price.

(a) Prior to 1:00 p.m. New York time on the Business Day that is the redemption date, the Company shall deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption price of and accrued interest to the redemption date on all Notes to be redeemed on that date. The Trustee or the Paying Agent shall promptly return to the Company any money deposited with the Trustee or the Paying Agent by the Company in excess of the amounts necessary to pay the redemption price of, and such accrued interest on, all Notes to be redeemed.

(b) If the Company complies with the provisions of the preceding paragraph, on and after the redemption date, interest shall cease to accrue on any Notes or portion of Notes called for redemption. If a Note is redeemed on or after an interest record date but on or prior to the related Interest Payment Date, then any accrued and unpaid interest shall be paid to the Holder in whose name such Note was registered at the close of business on such record date. If any Note called for redemption shall not be so paid upon surrender for redemption because of the failure of the Company to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption date until such principal is paid, and to the extent lawful, on any interest not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 5.01.

Section 4.06. Notes Redeemed in Part.

Upon surrender of a Note that is redeemed in part, the Company shall issue and the Trustee shall authenticate for the Holder at the expense of the Company a new Note equal in principal amount to the unredeemed portion of the Note surrendered. No Notes in denominations of $2,000 or less shall be redeemed in part.

Section 4.07. Optional Redemption.

(a) At any time prior to June 17, 2022, the Company may on any one or more occasions redeem up to 35% of the aggregate principal amount of Notes issued under this Indenture at a redemption price equal to 110% of the principal amount of the Notes redeemed, plus accrued and unpaid interest, if any, to the date of redemption (subject to the rights of Holders on the relevant record date to receive interest on the relevant Interest Payment Date), with an amount of cash not greater than the Net Cash Proceeds of an issue of Capital Stock (other than Disqualified Stock) by the Company; *provided* that:

(1) at least 65% of the aggregate principal amount of the Initial Notes (excluding Notes held by the Company and its Subsidiaries) remains outstanding immediately after the occurrence of such redemption; and

(2) the redemption occurs within 180 days of the date of the closing of such issuance of Capital Stock.

(b) At any time prior to June 17, 2022, the Company may on any one or more occasions redeem all or a part of the Notes at a redemption price equal to 100% of the principal amount of the Notes redeemed, plus the Applicable Premium as of, and accrued and unpaid interest, if any, to the date of redemption, subject to the rights of Holders on the relevant record date to receive interest due on the relevant Interest Payment Date.

(c) On or after June 17, 2022, the Company may on any one or more occasions redeem all or a part of the Notes at the redemption prices (expressed as percentages of principal amount) set forth below, plus accrued and unpaid interest, if any, on the Notes redeemed, to the applicable date of redemption, if redeemed during the twelve-month period beginning on June 17

during the calendar years indicated below, subject to the rights of Holders on the relevant record date to receive interest on the relevant Interest Payment Date:

Year	Percentage
2022	107.500%
2023	105.000%
2024 and thereafter	100.000%

(d) The Company may also redeem all of the Notes as provided in Section 5.15(j).

(e) Any redemption pursuant to this Section 4.07 shall be made pursuant to the provisions of Sections 4.01 through 4.06.

Section 4.08. Mandatory Redemption.

The Company is not required to make mandatory redemption or sinking fund payments with respect to the Notes.

Section 4.09. Application of Trust Money.

All money deposited with the Trustee pursuant to Section 4.05 shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

ARTICLE FIVE
COVENANTS

Section 5.01. Payment of Notes.

(a) The Company shall pay or cause to be paid the principal of, premium, if any, and interest on, the Notes on the dates and in the manner provided in the Notes. Principal, premium, if any, and interest shall be considered paid on the date due if the Paying Agent, if other than the Company or one of its Subsidiaries, holds as of 1:00 p.m. New York time on the due date money deposited by the Company in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest on, the Notes then due. If a payment date is not a Business Day, payment may be made on the next succeeding day that is a Business Day, and no interest shall accrue on such payment for the intervening period.

(b) The Company shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal and premium, if any, at the rate then in effect

on the Notes to the extent lawful; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace period) at the same rate to the extent lawful.

Section 5.02. Maintenance of Office or Agency.

(a) The Company shall maintain an office or agency (which may be an office of the Trustee or an agent of the Trustee or Registrar) where Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

(b) The Company may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations. The Company shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

(c) The Company hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Company in accordance with Section 3.04 of this Indenture.

Section 5.03. Reports.

(a) Whether or not the Company is subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act, to the extent not prohibited by the Exchange Act, the Company will make available to the Trustee and the Holders of the Notes without cost to any Holder, the annual reports and the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) that are specified in Sections 13 and 15(d) of the Exchange Act and applicable to a U.S. corporation within the time periods specified therein with respect to an accelerated filer.

(b) If the Company has designated any of its Subsidiaries as Unrestricted Subsidiaries, then the financial information required by Section 5.03(a) above will include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes thereto, and in Management's Discussion and Analysis of Financial Condition and Results of Operations, of the financial condition and results of operations of the Company and its Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries of the Company.

(c) For so long as any Notes remain outstanding, the Company will furnish to the Holders of the Notes and to securities analysts and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

(d) The Company shall be deemed to have furnished such reports to the Trustee and the Holders of Notes if it has filed such reports with the SEC using the EDGAR filing system or on the Company's website and such reports are publicly available.

Section 5.04. Compliance Certificate.

(a) The Company shall deliver to the Trustee, on or before a date not more than 120 days after the end of each fiscal year, an Officers' Certificate stating that a review of the activities of the Company and its Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officers with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Indenture and further stating, as to each such Officer signing such certificate, that to the best of his or her knowledge, the Company has kept, observed, performed and fulfilled its obligations under this Indenture and is not in default in the performance or observance of any of the material terms, provisions and conditions of this Indenture (or, if a Default or Event of Default shall have occurred and be continuing, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Company is taking or proposes to take with respect thereto).

(b) The Company shall, so long as any Notes are outstanding, notify the Trustee on or before the 30th day after it has knowledge of the occurrence and continuance of any Default and on or promptly thereafter, deliver to the Trustee an Officers' Certificate specifying such Default, its status and what action the Company is taking or proposes to take with respect thereto.

Section 5.05. Taxes.

The Company shall pay, and shall cause each of its Significant Subsidiaries to pay, prior to delinquency, any material taxes, assessments, and governmental levies except such as are contested in good faith and by appropriate proceedings or where the failure to effect such payment would not have a material adverse effect on the Company and its Restricted Subsidiaries, taken as a whole.

Section 5.06. Stay, Extension and Usury Laws.

The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

Section 5.07. Limitation on Indebtedness and Preferred Stock.

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, Incur any Indebtedness (including Acquired Indebtedness) and the

Company will not permit any of its Restricted Subsidiaries to issue Preferred Stock; *provided, however*, that the Company may Incur Indebtedness and any of the Subsidiary Guarantors may Incur Indebtedness and issue Preferred Stock if on the date thereof:

(1) the Consolidated Coverage Ratio for the Company and its Restricted Subsidiaries is at least 2.25 to 1.00, determined on a pro forma basis (including a pro forma application of proceeds); and

(2) no Default would occur as a consequence of, and no Event of Default would be continuing following, Incurring the Indebtedness or its application.

(b) Section 5.07(a) will not prohibit the Incurrence of the following Indebtedness (collectively, "Permitted Debt"):

(1) Indebtedness under one or more Credit Facilities of the Company or any Restricted Subsidiary Incurred pursuant to this Section 5.07(b)(1) in an aggregate amount not to exceed the greatest of (i) $1.1 billion, (ii) the Borrowing Base and (iii) 25.0% of the Company's Adjusted Consolidated Net Tangible Assets determined as of the date of the Incurrence of such Indebtedness after giving effect thereto and to the application of the proceeds therefrom;

(2) Guarantees of Indebtedness Incurred in accordance with the provisions of this Indenture; provided that in the event such Indebtedness that is being Guaranteed is a Subordinated Obligation or a Guarantor Subordinated Obligation, then the related Guarantee shall be subordinated in right of payment to the Notes or the Subsidiary Guarantee to at least the same extent as the Indebtedness being Guaranteed, as the case may be;

(3) Indebtedness of the Company owing to and held by any Restricted Subsidiary or Indebtedness of a Restricted Subsidiary owing to and held by the Company or any Restricted Subsidiary; *provided, however*, that (a)(i) if the Company is the obligor on such Indebtedness and the obligee is not a Subsidiary Guarantor, such Indebtedness must be expressly subordinated to the prior payment in full in cash of all obligations with respect to the Notes and (ii) if a Subsidiary Guarantor is the obligor of such Indebtedness and the obligee is neither the Company nor a Subsidiary Guarantor, such Indebtedness must be expressly subordinated to the prior payment in full in cash of all obligations of such Subsidiary Guarantor with respect to its Subsidiary Guarantee and (b)(i) any subsequent issuance or transfer of Capital Stock or any other event which results in any such Indebtedness being held by a Person other than the Company or a Restricted Subsidiary of the Company and (ii) any sale or other transfer of any such Indebtedness to a Person other than the Company or a Restricted Subsidiary of the Company shall be deemed, in each case, to constitute an Incurrence of such Indebtedness by the Company or such Subsidiary, as the case may be, that was not permitted by this Section 5.07(b)(3);

(4) Indebtedness represented by (a) the Notes issued on the Issue Date and all Subsidiary Guarantees, (b) any other Parity Lien Debt, in each case Incurred pursuant to sub-clauses (a) and (b), in an aggregate amount (together with any Indebtedness incurred as Refinancing Indebtedness pursuant to clause (6) below in respect thereof to refinance the foregoing) at any one time outstanding, that, on the date of such Incurrence and after giving

effect thereto and the application of the proceeds therefrom, does not exceed $800 million and (c) any Convertible Secured Debt;

(5) any Indebtedness (other than the Indebtedness described in Sections 5.07(b)(1), (2) or (4)) outstanding on the Issue Date;

(6) any Refinancing Indebtedness Incurred in respect of any Indebtedness described in Sections 5.07(b)(4), (5), (6), (7) and (9) or Incurred pursuant to Section 5.07(a);

(7) Permitted Acquisition Indebtedness and Non-Recourse Purchase Money Indebtedness;

(8) Indebtedness in respect of (a) self-insurance obligations, bid, appeal, reimbursement, performance, surety and similar bonds and completion guarantees provided by the Company or a Restricted Subsidiary in the ordinary course of business and any Guarantees or letters of credit functioning as or supporting any of the foregoing bonds or obligations and (b) obligations represented by letters of credit for the account of the Company or a Restricted Subsidiary in order to provide security for workers' compensation claims (in the case of subclauses (a) and (b) of this Section 5.07(b)(8) other than for an obligation for money borrowed);

(9) Indebtedness represented by Capitalized Lease Obligations of the Company or any of its Restricted Subsidiaries (whether or not Incurred pursuant to sale and leaseback transactions), mortgage financings or purchase money obligations, Incurred in connection with the acquisition, construction, improvement or development of real or personal, movable or immovable, property, in each case Incurred for the purpose of financing, refinancing, renewing, defeasing or re-funding all or any part of the purchase price or cost of acquisition, construction, improvement or development of property used in the business of the Company or such Restricted Subsidiary, provided that after giving effect to any such Incurrence, the aggregate principal amount of all Indebtedness Incurred pursuant to this Section 5.07(b)(9), together with any Refinancing Indebtedness Incurred pursuant to Section 5.07(b)(6) in respect of such Indebtedness, and then outstanding does not exceed $35.0 million; and

(10) in addition to the items referred to in Sections 5.07(b)(1) through (9) above, Indebtedness of the Company and its Restricted Subsidiaries in an aggregate outstanding principal amount which, when taken together with the principal amount of all other Indebtedness Incurred pursuant to this Section 5.07(b)(10) and then outstanding, will not exceed the greater of $150.0 million or 2.5% of the Company's Adjusted Consolidated Net Tangible Assets, determined as of the date of Incurrence of such Indebtedness after giving effect to such Incurrence and the application of the proceeds therefrom.

(c) For purposes of determining compliance with, and the outstanding principal amount of any particular Indebtedness Incurred pursuant to and in compliance with, this Section 5.07:

(1) in the event that an item of that Indebtedness meets the criteria of more than one of the types of Indebtedness described in Section 5.07(a) or (b), the Company, in its sole discretion, will classify such item of Indebtedness on the date of Incurrence and, subject to Section 5.07(c)(2) below, may later classify, reclassify or redivide all or a portion of such item of Indebtedness, in any manner that complies with this Section 5.07;

(2) all Indebtedness outstanding on the Issue Date under the Senior Secured Credit Agreement shall be deemed Incurred on the Issue Date under clause (1) of Section 5.07(b);

(3) Guarantees of, or obligations in respect of letters of credit supporting, Indebtedness which is otherwise included in the determination of a particular amount of Indebtedness shall not be included;

(4) if obligations in respect of letters of credit are Incurred pursuant to a Credit Facility and are being treated as Incurred pursuant to clause (1) of Section 5.07(b) and the letters of credit relate to other Indebtedness, then such other Indebtedness shall not be included to the extent of the underlying letter of credit;

(5) the principal amount of any Disqualified Stock of the Company or a Restricted Subsidiary, or Preferred Stock of a Restricted Subsidiary, will be equal to the greater of the maximum mandatory redemption or repurchase price (not including, in either case, any redemption or repurchase premium) or the liquidation preference thereof;

(6) Indebtedness permitted by this Section 5.07 need not be permitted solely by reference to one provision permitting such Indebtedness but may be permitted in part by one such provision and in part by one or more other provisions of this Section 5.07 permitting such Indebtedness;

(7) the amount of Indebtedness issued at a price that is less than the principal amount thereof will be equal to the amount of the liability in respect thereof determined in accordance with GAAP; and

(8) Indebtedness, the proceeds of which are funded into an escrow or other trust arrangement pending the satisfaction of one or more conditions, shall not be included unless and until such proceeds are released to such Person or any of its Restricted Subsidiaries.

(d) Accrual of interest, accrual of dividends, the amortization of debt discount or the accretion of accreted value, the payment of interest in the form of additional Indebtedness, the payment of dividends in the form of additional shares of Preferred Stock or Disqualified Stock and unrealized losses or charges in respect of Hedging Obligations will not be deemed to be an Incurrence of Indebtedness for purposes of this Section 5.07.

(e) The Company will not permit any of its Unrestricted Subsidiaries to Incur any Indebtedness, or issue any shares of Disqualified Stock, other than Non-Recourse Debt. If at any time an Unrestricted Subsidiary becomes a Restricted Subsidiary, any Indebtedness of such

Subsidiary shall be deemed to be Incurred by a Restricted Subsidiary as of such date and, if such Indebtedness is not permitted to be Incurred as of such date under this Section 5.07, the Company shall be in Default of this Section 5.07.

(f) For purposes of determining compliance with any U.S. dollar-denominated restriction on the Incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term Indebtedness, or first committed, in the case of revolving credit Indebtedness; provided that if such Indebtedness is Incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such Refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced. Notwithstanding any other provision of this Section 5.07, the maximum amount of Indebtedness that the Company may Incur pursuant to this Section 5.07 shall not be deemed to be exceeded solely as a result of fluctuations in the exchange rates of currencies. The principal amount of any Indebtedness Incurred to refinance other Indebtedness, if Incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such Refinancing Indebtedness is denominated that is in effect on the date of such refinancing.

(g) Nothing contained in this Indenture is intended to treat (1) unsecured Indebtedness as subordinated or junior to secured Indebtedness merely because it is unsecured or (2) senior Indebtedness as subordinated or junior to any other senior Indebtedness merely because it has a junior priority with respect to the same collateral.

Section 5.08. Limitation on Restricted Payments.

(a) The Company will not, and will not permit any of its Restricted Subsidiaries, directly or indirectly, to:

(1) pay any dividend or make any payment or distribution on or in respect of the Company's or any Restricted Subsidiaries' Capital Stock (including any payment or distribution in connection with any merger or consolidation involving the Company or any of its Restricted Subsidiaries) except:

(A) dividends or distributions by the Company payable solely in Capital Stock of the Company (other than Disqualified Stock but including options, warrants or other rights to purchase such Capital Stock of the Company); and

(B) dividends or distributions payable to the Company or a Restricted Subsidiary and if such Restricted Subsidiary is not a Wholly-Owned Subsidiary, to minority stockholders (or owners of an equivalent interest in the case of a Subsidiary that is an entity other than a corporation) so long as the Company or a Restricted Subsidiary receives at least its pro rata share of such dividend or distribution;

(2) purchase, repurchase, redeem, defease or otherwise acquire or retire for value any Capital Stock of the Company or any direct or indirect parent of the Company held by Persons other than the Company or a Restricted Subsidiary (other than in exchange for Capital Stock of the Company (other than Disqualified Stock));

(3) purchase, repurchase, redeem, defease or otherwise acquire or retire for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment, any Subordinated Obligations or Guarantor Subordinated Obligations; or

(4) make any Restricted Investment in any Person;

(any such dividend, distribution, purchase, redemption, repurchase, defeasance, other acquisition, retirement or Restricted Investment referred to in Sections 5.08(a)(1) through (4) shall be referred to herein as a "Restricted Payment"), if at the time the Company or such Restricted Subsidiary makes such Restricted Payment:

(A) a Default shall have occurred and be continuing (or would result therefrom);

(B) the Company is not able to Incur an additional $1.00 of Indebtedness pursuant to Section 5.07(a) of this Indenture after giving effect, on a pro forma basis, to such Restricted Payment; or

(C) the aggregate amount of such Restricted Payment and all other Restricted Payments declared or made subsequent to the Issue Date would exceed the sum of (the "Restricted Payment Basket"):

(i) 50% of Consolidated Net Income for the period (treated as one accounting period) from April 1, 2020 to the end of the most recent fiscal quarter ending prior to the date of such Restricted Payment for which internal financial statements are in existence (or, in case such Consolidated Net Income is a deficit, minus 100% of such deficit);

(ii) 100% of the aggregate Net Cash Proceeds and the Fair Market Value of property or securities other than cash (including Capital Stock of Persons engaged primarily in the Oil and Gas Business or assets used in the Oil and Gas Business), in each case received by the Company from the issue or sale of its Capital Stock (other than Disqualified Stock) or other capital contributions subsequent to the Issue Date (other than Net Cash Proceeds received from an issuance or sale of such Capital Stock to (x) Persons indicated in clause (5)(a) of Section 5.08(b) or any direct or indirect parent of the Company, to the extent such Net Cash Proceeds have been used to make a Restricted Payment pursuant to clause (5)(a) of Section 5.08(b), (y) a Subsidiary of the Company or (z) an employee stock ownership plan, option plan or similar trust (to the extent such sale to an employee stock ownership plan, option plan or similar trust is financed by

loans from or Guaranteed by the Company or any Restricted Subsidiary unless such loans have been repaid with cash on or prior to the date of determination)); *provided* that such amounts added pursuant to this clause (ii) will not be considered to be Net Cash Proceeds from the issue or sale of its Capital Stock for purposes of Section 4.07(a) of this Indenture;

(iii) the amount by which Indebtedness of the Company or its Restricted Subsidiaries is reduced on the Company's balance sheet upon the conversion or exchange (other than by a Subsidiary of the Company) subsequent to the Issue Date of any Indebtedness of the Company or its Restricted Subsidiaries convertible or exchangeable for Capital Stock (other than Disqualified Stock) of the Company (less the amount of any cash, or the Fair Market Value of any other property (other than such Capital Stock), distributed by the Company upon such conversion or exchange), together with the net proceeds, if any, received by the Company or any of its Restricted Subsidiaries upon such conversion or exchange; *provided* that such amounts added pursuant to this clause (iii) will not be considered to be Net Cash Proceeds from the issue or sale of its Capital Stock for purposes of Section 4.07(a) of this Indenture; and

(iv) the amount equal to the aggregate net reduction in Restricted Investments made by the Company or any of its Restricted Subsidiaries in any Person after the Issue Date resulting from:

(A) repurchases, repayments or redemptions of such Restricted Investments by such Person, proceeds realized upon the sale of such Restricted Investment (other than to a Subsidiary of the Company), repayments of loans or advances or other transfers of assets (including by way of dividend or distribution) by such Person to the Company or any Restricted Subsidiary;

(B) the redesignation of Unrestricted Subsidiaries as Restricted Subsidiaries (valued in each case as provided in the definition of "Investment") not to exceed, in the case of any Unrestricted Subsidiary, the amount of Investments previously made by the Company or any Restricted Subsidiary in such Unrestricted Subsidiary, which amount in each case under this Section 5.08(a)(4)(C)(iv) was included in the calculation of the amount of Restricted Payments; provided, however, that no amount will be included under this Section 5.08(a)(4)(C)(iv) to the extent it is already included in Consolidated Net Income; and

(C) the sale by the Company or any Restricted Subsidiary (other than to the Company or a Restricted Subsidiary) of all or a portion of the Capital Stock of an Unrestricted Subsidiary or a distribution from an Unrestricted Subsidiary or a dividend from an Unrestricted Subsidiary (whether any such distribution or dividend is

made with proceeds from the issuance by such Unrestricted Subsidiary of its Capital Stock or otherwise).

(b) Notwithstanding the foregoing, Section 5.08(a) shall not prohibit the following actions:

(1) any Restricted Payment made by exchange for, or out of the proceeds of the substantially concurrent sale of, Capital Stock of the Company (other than Disqualified Stock and other than Capital Stock issued or sold to a Subsidiary of the Company or an employee stock ownership plan or similar trust to the extent such sale to an employee stock ownership plan or similar trust is financed by loans from or Guaranteed by the Company or any Restricted Subsidiary unless such loans have been repaid with cash on or prior to the date of determination) or a substantially concurrent cash capital contribution received by the Company from its stockholders; provided, however, that (a) such Restricted Payment will be excluded from subsequent calculations of the amount of Restricted Payments, (b) the Net Cash Proceeds from such sale of Capital Stock or capital contribution will be excluded from Section 5.08(a)(4)(C)(ii) and (c) such proceeds will not be considered to be Net Cash Proceeds from the issue or sale of the Company's Capital Stock for purposes of Section 4.07(a) of this Indenture;

(2) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Obligations of the Company or Guarantor Subordinated Obligations made by exchange for, or out of the proceeds of the substantially concurrent sale of, Refinancing Indebtedness that, in each case, is permitted to be Incurred pursuant to Section 5.07 of this Indenture; *provided*, *however*, that such purchase, repurchase, redemption, defeasance, acquisition or retirement will be excluded from subsequent calculations of the amount of Restricted Payments;

(3) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Disqualified Stock of the Company or a Restricted Subsidiary made by exchange for, or out of the proceeds of the substantially concurrent sale of, Disqualified Stock of the Company or such Restricted Subsidiary, as the case may be, that, in each case, is permitted to be Incurred pursuant to Section 5.07 of this Indenture; *provided, however*, that such purchase, repurchase, redemption, defeasance, acquisition or retirement will be excluded from subsequent calculations of the amount of Restricted Payments;

(4) dividends paid or distributions made within 60 days after the date of declaration if at such date of declaration such dividend or distribution would have complied with this Section 5.08 if it had been made on such date; provided, however, that such dividends and distributions will be included in subsequent calculations of the amount of Restricted Payments; and *provided further, however*, that for purposes of clarification, this Section 5.08(b)(4) shall not include cash payments in lieu of the issuance of fractional shares included in Section 5.08(b)(9) below;

(5) so long as no Default has occurred and is continuing, (a) the repurchase or other acquisition of Capital Stock (including options, warrants, equity appreciation rights or other rights to purchase or acquire Capital Stock) of the Company held by any existing or former

employees, officers or directors of the Company or any Restricted Subsidiary of the Company or their assigns, estates or heirs, in each case pursuant to the repurchase or other acquisition provisions under employee stock option or stock purchase plans or agreements or other agreements to compensate officers, employees or directors, in each case approved by the Company's Board of Directors; *provided* that such repurchases or other acquisitions pursuant to this subclause (5)(a) during any calendar year will not exceed $2.5 million in the aggregate (with unused amounts in any calendar year being carried over to succeeding calendar years); *provided further*, that such amount in any calendar year may be increased by an amount not to exceed:

(A) the cash proceeds received by the Company from the sale of Capital Stock of the Company to any existing or former employees, officers or directors of the Company and any of its Restricted Subsidiaries or their assigns, estates or heirs that occurs after the Issue Date (to the extent the cash proceeds from the sale of such Capital Stock have not otherwise been applied to the payment of Restricted Payments by virtue of Section 5.08(a)(4)(C) or to an optional redemption of the Notes pursuant to Section 4.07 of this Indenture), plus

(B) the cash proceeds of key man life insurance policies received by the Company and its Restricted Subsidiaries after the Issue Date, less

(C) the amount of any Restricted Payments made pursuant to Section 5.08(b)(5)(a)(A) and (B);

provided further, *however*, that the amount of any such repurchase or other acquisition under this subclause (5)(a) will be excluded in subsequent calculations of the amount of Restricted Payments and the proceeds received from any such transaction will be excluded from Section 5.08(a)(4)(C)(ii) for purposes of calculating the Restricted Payment Basket; and

(b) loans or advances to employees, officers or directors of the Company or any Subsidiary of the Company, in each case as permitted by Section 402 of the Sarbanes-Oxley Act of 2002, the proceeds of which are used to purchase Capital Stock of the Company, or to refinance loans or advances made pursuant to this subclause (5)(b), in an aggregate principal amount not in excess of $2.5 million at any one time outstanding; *provided, however*, that the amount of such loans and advances will be included in subsequent calculations of the amount of Restricted Payments;

(6) purchases, repurchases, redemptions or other acquisitions or retirements for value of Capital Stock deemed to occur upon the exercise of stock options, warrants, rights to acquire Capital Stock or other convertible securities if such Capital Stock represents a portion of the exercise or exchange price thereof, and any purchases, repurchases, redemptions or other acquisitions or retirements for value of Capital Stock made in lieu of withholding taxes in connection with any exercise or exchange of warrants, options or rights to acquire Capital Stock; *provided, however,* that such acquisitions or retirements will be excluded from subsequent calculations of the amount of Restricted Payments;

(7) the purchase, repurchase, redemption, defeasance or other acquisition or retirement for value of any Subordinated Obligation of the Company or Guarantor Subordinated Obligation (a) at a purchase price not greater than 101% of the principal amount of such Indebtedness in the event of a Change of Control in accordance with provisions similar to Section 5.15 or (b) at a purchase price not greater than 100% of the principal amount thereof in accordance with provisions similar to Section 5.11 of this Indenture; *provided* that, prior to or simultaneously with such purchase, repurchase, redemption, defeasance or other acquisition or retirement, the Company has made the Change of Control Offer or Asset Disposition Offer, as applicable, as provided Section 5.15 or Section 5.11, as applicable, and has completed the repurchase or redemption of all Notes validly tendered for payment in connection with such Change of Control Offer or Asset Disposition Offer; *provided, however*, that such acquisitions or retirements will be excluded in subsequent calculations of the amount of Restricted Payments;

(8) payments or distributions to dissenting stockholders pursuant to applicable Legal Requirements or in connection with the settlement or other satisfaction of legal claims made pursuant to or in connection with a consolidation, merger or transfer of assets; *provided, however,* that any payment pursuant to this Section 5.08(b)(8) shall be excluded in the calculation of the amount of Restricted Payments;

(9) cash payments in lieu of the issuance of fractional shares; *provided, however,* that any payment pursuant to this Section 5.08(b)(9) shall be excluded in the calculation of the amount of Restricted Payments;

(10) the payment of scheduled or accrued dividends to holders of any class of or series of Disqualified Stock of the Company issued on or after the Issue Date in accordance with Section 5.07, to the extent such dividends are included in Consolidated Interest Expense; *provided, however*, that any payment pursuant to this Section 5.08(b)(10) shall be excluded in the calculation of the amount of Restricted Payments;

(11) the payment of dividends on the Company's Common Stock in an aggregate amount not to exceed $20.0 million in any calendar year; *provided, however,* that the amount of such Restricted Payments will be excluded in subsequent calculations of the amount of Restricted Payments; and

(12) Restricted Payments in an amount not to exceed $30.0 million in the aggregate since the Issue Date; *provided, however*, that the amount of such Restricted Payments will be excluded in subsequent calculations of the amount of Restricted Payments.

(c) The amount of all Restricted Payments (other than cash) shall be the Fair Market Value on the date of such Restricted Payment of the asset(s) or securities proposed to be paid, transferred or issued by the Company or such Restricted Subsidiary, as the case may be, pursuant to such Restricted Payment. The Fair Market Value of any cash Restricted Payment shall be its face amount and the Fair Market Value of any non-cash Restricted Payment shall be determined in accordance with the definition of that term. Not later than 30 days after the date of making any Restricted Payment in excess of $15.0 million that will be included in subsequent calculations of the amount of Restricted Payments, the Company shall deliver to the Trustee an Officers'

Certificate stating that such Restricted Payment is permitted and setting forth the basis upon which the calculations required by this Section 5.08 were computed.

(d) If a Restricted Payment meets the criteria of more than one of the exceptions described in clauses (1) through (12) of Section 5.08(b) above or is entitled to be made pursuant to Section 5.08(a), the Company shall, in its sole discretion, subdivide and classify, and may later reclassify, such Restricted Payment in any manner that complies with this Section 5.08.

(e) For the purpose of designating any Restricted Subsidiary as an Unrestricted Subsidiary, all outstanding Investments by the Company and its Restricted Subsidiaries (except to the extent repaid) in the Subsidiary so designated will be deemed to be Restricted Payments in an amount determined as set forth in the last sentence of the definition of "Investment." Such designation will be permitted only if a Restricted Payment in such amount would be permitted at such time, whether pursuant to Section 5.08(a) or under clause (12) of Section 5.08(b), or pursuant to the definition of "Permitted Investments," and if such Subsidiary otherwise meets the definition of an Unrestricted Subsidiary.

Section 5.09. Limitation on Liens.

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, Incur or suffer to exist any Lien other than Permitted Liens upon any of its property or assets (including Capital Stock of Restricted Subsidiaries), including any income or profits therefrom, whether owned on the Issue Date or acquired after that date, which Lien is securing any Indebtedness.

Section 5.10. Limitation on Restrictions on Distributions from Restricted Subsidiaries.

(a) The Company will not, and will not permit any Restricted Subsidiary to, create or otherwise cause or permit to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Restricted Subsidiary to:

(1) pay dividends or make any other distributions on its Capital Stock or pay any Indebtedness or other obligations owed to the Company or any Restricted Subsidiary (it being understood that the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on Common Stock shall not be deemed a restriction on the ability to make distributions on Capital Stock);

(2) make any loans or advances to the Company or any Restricted Subsidiary (it being understood that the subordination of loans or advances made to the Company or any Restricted Subsidiary to other Indebtedness Incurred by the Company or any Restricted Subsidiary shall not be deemed a restriction on the ability to make loans or advances); or

(3) sell, lease or transfer any of its property or assets to the Company or any Restricted Subsidiary.

(b) However, Section 5.10(a) will not prohibit:

(1) any encumbrance or restriction pursuant to or by reason of an agreement in effect at or entered into on the Issue Date, including, without limitation, the Note Documents as in effect on such date;

(2) any encumbrance or restriction with respect to a Person pursuant to or by reason of an agreement relating to any Capital Stock or Indebtedness Incurred by a Person on or before the date on which such Person was acquired by the Company or another Restricted Subsidiary (other than Capital Stock or Indebtedness Incurred as consideration in, or to provide all or any portion of the funds utilized to consummate, the transaction or series of related transactions pursuant to which such Person was acquired by the Company or a Restricted Subsidiary or in contemplation of the transaction) and outstanding on such date; *provided,* that any such encumbrance or restriction shall not extend to any assets or property of the Company or any other Restricted Subsidiary other than the assets and property so acquired;

(3) encumbrances and restrictions contained in contracts entered into in the ordinary course of business, not relating to any Indebtedness, and that do not, individually or in the aggregate, detract from the value of, or from the ability of the Company and the Restricted Subsidiaries to realize the value of, property or assets of the Company or any Restricted Subsidiary in any manner material to the Company or any Restricted Subsidiary;

(4) any encumbrance or restriction with respect to an Unrestricted Subsidiary pursuant to or by reason of an agreement that the Unrestricted Subsidiary is a party to entered into before the date on which such Unrestricted Subsidiary became a Restricted Subsidiary; *provided,* that such agreement was not entered into in anticipation of the Unrestricted Subsidiary becoming a Restricted Subsidiary and any such encumbrance or restriction shall not extend to any assets or property of the Company or any other Restricted Subsidiary other than the assets and property so acquired;

(5) with respect to any Restricted Subsidiary incorporated or organized outside the United States, any encumbrance or restriction contained in the terms of any Indebtedness or any agreement pursuant to which such Indebtedness was Incurred if either (a) the encumbrance or restriction applies only in the event of a payment default or a default with respect to a financial covenant in such Indebtedness or agreement or (b) the Company determines that any such encumbrance or restriction will not materially affect the Company's ability to make principal or interest payments on the Notes, as determined in good faith by the Board of Directors of the Company, whose determination shall be conclusive;

(6) any encumbrance or restriction with respect to a Restricted Subsidiary pursuant to an agreement effecting a re-funding, replacement or refinancing of Indebtedness Incurred pursuant to an agreement referred to in clauses (1) through (5), clause (12) or this clause (6) of this Section 5.10(b) or contained in any amendment, restatement, modification, renewal, supplemental, re-funding, replacement or refinancing of an agreement referred to in clauses (1) through (5), clause (12) or this clause (6) of this Section 5.10(b); *provided,* that the encumbrances and restrictions with respect to such Restricted Subsidiary contained in any such agreement taken as a whole are no less favorable in any material respect to the Holders of the

Notes than the encumbrances and restrictions contained in the agreements governing the Indebtedness being re-funded, replaced or refinanced;

(7) in the case of clause (3) of Section 5.10(a) above, any encumbrance or restriction:

(A) that restricts in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease (including leases governing leasehold interests or farm-in agreements or farm-out agreements relating to leasehold interests in Oil and Gas Properties), license or similar contract, or the assignment or transfer of any such lease (including leases governing leasehold interests or farm-in agreements or farm-out agreements relating to leasehold interests in Oil and Gas Properties), license (including, without limitation, licenses of intellectual property) or other contract;

(B) contained in mortgages, pledges or other security agreements permitted under this Indenture securing Indebtedness of the Company or a Restricted Subsidiary to the extent such encumbrances or restrictions restrict the transfer of the property subject to such mortgages, pledges or other security agreements;

(C) contained in any agreement creating Hedging Obligations permitted from time to time under this Indenture;

(D) pursuant to customary provisions restricting dispositions of real property interests set forth in any reciprocal easement agreements of the Company or any Restricted Subsidiary;

(E) restrictions on cash, Cash Equivalents, or other deposits imposed by customers under contracts entered into in the ordinary course of business; or

(F) provisions with respect to the disposition or distribution of assets or property or transfer of Capital Stock in operating agreements, joint venture agreements, development agreements, area of mutual interest agreements and other agreements that are customary in the Oil and Gas Business and entered into in the ordinary course of business;

(8) any encumbrance or restriction contained in (a) purchase money obligations for property acquired in the ordinary course of business and (b) Capitalized Lease Obligations permitted under this Indenture, in each case, that impose encumbrances or restrictions of the nature described in clause (3) of Section 5.10(a) on the property so acquired;

(9) any encumbrance or restriction with respect to a Restricted Subsidiary (or any of its property or assets) imposed pursuant to an agreement entered into for the direct or indirect sale or disposition of all or a portion of the Capital Stock or assets of such Restricted Subsidiary (or the property or assets that are subject to such restriction) pending the closing of such sale or disposition;

(10) any customary encumbrances or restrictions imposed pursuant to any agreement of the type described in the definition of "Permitted Business Investment";

(11) encumbrances or restrictions arising or existing by reason of applicable Legal Requirements or any applicable rule, regulation or order;

(12) encumbrances or restrictions contained in agreements governing Indebtedness of the Company or any of its Restricted Subsidiaries permitted to be Incurred pursuant to an agreement entered into subsequent to the Issue Date in accordance with Section 5.07; *provided,* that the provisions relating to such encumbrance or restriction contained in such Indebtedness are not materially less favorable to the Company taken as a whole, as determined by the Board of Directors of the Company in good faith, than the provisions contained in the Senior Secured Credit Agreement and in this Indenture as in effect on the Issue Date;

(13) the issuance of Preferred Stock by a Restricted Subsidiary or the payment of dividends thereon in accordance with the terms thereof; *provided,* that issuance of such Preferred Stock is permitted pursuant to Section 5.07 and the terms of such Preferred Stock do not expressly restrict the ability of a Restricted Subsidiary to pay dividends or make any other distributions on its Capital Stock (other than requirements to pay dividends or liquidation preferences on such Preferred Stock prior to paying any dividends or making any other distributions on such other Capital Stock);

(14) supermajority voting requirements existing under corporate charters, bylaws, stockholders agreements and similar documents and agreements;

(15) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business; and

(16) any encumbrance or restriction contained in the Senior Secured Credit Agreement as in effect as of the Issue Date, and in any amendments, modifications, restatements, renewals, increases, supplements, re-fundings, replacements or refinancing thereof; provided that such amendments, modifications, restatements, renewals, increases, supplements, re-fundings, replacements or refinancings are no more restrictive with respect to such dividend and other payment restrictions than those contained in the Senior Secured Credit Agreement as in effect on the Issue Date.

Section 5.11. Limitation on Sales of Assets and Subsidiary Stock.

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, make any Asset Disposition unless:

(1) the Company or such Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Disposition at least equal to the Fair Market Value (such Fair Market Value to be determined on the date of contractually agreeing to such Asset Disposition) of the shares or other assets subject to such Asset Disposition; and

(2) at least 75% of the aggregate consideration received by the Company or such Restricted Subsidiary, as the case may be, from such Asset Disposition and all other Asset Dispositions since the Prior Notes Issue Date, on a cumulative basis, is in the form of cash or Cash Equivalents or Additional Assets, or any combination thereof.

(b) An amount equal to the amount of Net Available Cash from such Asset Disposition may be applied, within 365 days from the later of the date of such Asset Disposition or the receipt of such Net Available Cash, by the Company or such Restricted Subsidiary, as the case may be:

(1) to prepay, repay, redeem or purchase Priority Lien Debt (excluding Indebtedness owed to the Company or an Affiliate of the Company);

(2) to prepay, repay, repurchase or redeem any Parity Lien Debt; *provided* that if the Company shall so prepay, repay or reduce any Parity Lien Debt other than the Notes, the Company shall equally and ratably prepay or repay (or offer to repay) Notes at the Company's option, as provided under Section 4.07 of this Indenture, through open-market purchases or by making an offer (in accordance with the procedures set forth below for an Asset Disposition Offer (as defined below)) to all holders of Notes to purchase such Notes ratably at 100% of the principal amount thereof, plus the amount of accrued but unpaid interest, if any, on the amount of Notes that would otherwise be prepaid or repaid;

(3) to the extent such Asset Disposition relates to properties and assets that are not Collateral securing the Notes, to prepay, repay, repurchase or redeem any outstanding Existing Notes; or

(4) to make capital expenditures in the Oil and Gas Business or to invest in Additional Assets;

provided, however, that in connection with any prepayment, repayment, redemption or purchase of Indebtedness pursuant to clauses (1), (2) or (3) of this Section 5.11(b), the Company or such Restricted Subsidiary will retire such Indebtedness and will cause the related commitment (if any) to be permanently reduced in an amount equal to the principal amount so prepaid, repaid, redeemed or purchased; *provided*, *further*, that pending the final application of any such Net Available Cash in accordance with clauses (1), (2), (3) or (4) of this Section 5.11(b), the Company and its Restricted Subsidiaries may temporarily reduce Indebtedness or otherwise invest such Net Available Cash in any manner not prohibited by this Indenture.

(c) Any amount of Net Available Cash from Asset Dispositions that is not applied or invested as provided in Section 5.11(b) will be deemed to constitute "Excess Proceeds." Not later than the 366th day from the later of the date of such Asset Disposition or the receipt of such Net Available Cash, if the aggregate amount of Excess Proceeds exceeds $25.0 million, the Company will be required to make an offer ("Asset Disposition Offer") to all Holders of Notes then outstanding and, to the extent required by the terms of other Parity Lien Debt, to all holders of other Parity Lien Debt, outstanding with similar provisions requiring the Company to make an offer to purchase such Parity Lien Debt, with the proceeds from any Asset Disposition to

purchase the maximum principal amount of Notes and any such Parity Lien Debt to which the Asset Disposition Offer applies that may be purchased out of the Excess Proceeds, at an offer price in cash in an amount equal to 100% of the principal amount (or, in the event such Parity Lien Debt of the Company was issued with significant original issue discount, 100% of the accreted value thereof) of the Notes and Parity Lien Debt plus accrued and unpaid interest, if any (or in respect of such Parity Lien Debt, such lesser price, if any, as may be provided for by the terms of such Indebtedness), to but excluding, the date of purchase (subject to the right of Holders of record on the relevant record date to receive interest due on the Interest Payment Date), in accordance with the procedures set forth in this Indenture or the agreements governing the Parity Lien Debt, as applicable, in each case in minimum principal amount of $2,000 and integral multiples of $1,000 in excess of $2,000. If the aggregate principal amount of Notes surrendered by holders thereof and other Parity Lien Debt surrendered by holders or lenders, collectively, exceeds the amount of Excess Proceeds, the Trustee shall select the Notes to be purchased (i) initially on a pro rata basis on the basis of the aggregate principal amount of tendered Notes and Parity Lien Debt and (ii) secondarily, with respect to any Notes tendered, on a pro rata basis on the basis of the aggregate principal amount of the Notes tendered. To the extent that the aggregate principal amount of Notes and Parity Lien Debt so validly tendered and not properly withdrawn pursuant to an Asset Disposition Offer is less than the Excess Proceeds, the Company may use any remaining Excess Proceeds for general corporate purposes, subject to Articles Five and Six of this Indenture. Upon completion of such Asset Disposition Offer, the amount of Excess Proceeds shall be reset at zero.

(d) The Asset Disposition Offer will remain open for a period of 20 Business Days following its commencement, except to the extent that a longer period is required by applicable Legal Requirements (the "Asset Disposition Offer Period"). No later than five Business Days after the termination of the Asset Disposition Offer Period (the "Asset Disposition Purchase Date"), the Company will purchase the principal amount of Notes and Parity Lien Debt required to be purchased pursuant to this Section 5.11 (the "Asset Disposition Offer Amount") or, if less than the Asset Disposition Offer Amount has been so validly tendered and not properly withdrawn, all Notes and Parity Lien Debt validly tendered and not properly withdrawn in response to the Asset Disposition Offer.

(e) If the Asset Disposition Purchase Date is on or after an interest record date and on or before the related Interest Payment Date, any accrued and unpaid interest, if any, will be paid to the Person in whose name a Note is registered at the close of business on such record date, and no further interest will be payable to Holders who tender Notes pursuant to the Asset Disposition Offer.

(f) On or before the Asset Disposition Purchase Date, the Company will, to the extent lawful, accept for payment, on a pro rata basis to the extent necessary, the Asset Disposition Offer Amount of Notes and Parity Lien Debt or portions of Notes and Parity Lien Debt so validly tendered and not properly withdrawn pursuant to the Asset Disposition Offer, or if less than the Asset Disposition Offer Amount has been validly tendered and not properly withdrawn, all Notes and Parity Lien Debt so validly tendered and not properly withdrawn, in each case in minimum principal amount of $2,000 and integral multiples of $1,000 in excess of $2,000. The Company

will deliver to the Trustee an Officers' Certificate stating that such Notes or portions thereof were accepted for payment by the Company in accordance with the terms of this Section 5.11 and, in addition, the Company will deliver all certificates and notes required, if any, by the agreements governing the Parity Lien Debt. The Company or the paying agent, as the case may be, will promptly (but in any case not later than five Business Days after the termination of the Asset Disposition Offer Period) mail or deliver to each tendering Holder of Notes or holder or lender of Parity Lien Debt, as the case may be, an amount equal to the purchase price of the Notes or Parity Lien Debt so validly tendered and not properly withdrawn by such holder or lender, as the case may be, and accepted by the Company for purchase, and the Company will promptly issue a new Note, and the Trustee, upon delivery of an Officers' Certificate from the Company, will authenticate and mail or deliver such new Note to such Holder, in a principal amount equal to any unpurchased portion of the Note surrendered; *provided,* that each such new Note will be in a minimum principal amount of $2,000 or an integral multiple of $1,000 in excess of $2,000. In addition, the Company will take any and all other actions required by the agreements governing the Parity Lien Debt. Any Note not so accepted will be promptly mailed or delivered by the Company to the Holder thereof. The Company will publicly announce the results of the Asset Disposition Offer on the Asset Disposition Purchase Date.

(g) The Company will comply, to the extent applicable, with the requirements of Rule 14e-1 of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Notes pursuant to an Asset Disposition Offer. To the extent that the provisions of any securities laws or regulations conflict with provisions of this Section 5.11, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Indenture by virtue of such compliance.

(h) For the purposes of clause (2) of Section 5.11(a) above, the following will be deemed to be cash:

(1) any liabilities, as shown on the Company's most recent consolidated balance sheet, of the Company or any Restricted Subsidiary, other than contingent liabilities and liabilities that constitute Junior Lien Obligations, Unsecured Pari Passu Indebtedness, Subordinated Obligations or Guarantor Subordinated Obligations that are (i) assumed by the transferee of any such assets or property and from which the Company or such Restricted Subsidiary shall have been validly released by all applicable creditors in writing or (ii) otherwise discharged, forgiven, cancelled or terminated in connection with the transaction with such transferee (other than intercompany debt owed to the Company or any Restricted Subsidiary of the Company);

(2) with respect to any Asset Disposition of Oil and Gas Properties by the Company or a Restricted Subsidiary in which the Company or such Restricted Subsidiary retains an interest in such property, the costs and expenses of the Company or such Restricted Subsidiary related to the exploration, development, completion or production of such property and activities related thereto that the transferee (or an Affiliate thereof) agrees to pay; and

(3) any securities, notes or other obligations received by the Company or any Restricted Subsidiary from such transferee that are, within 180 days after the Asset Disposition,

converted by the Company or such Restricted Subsidiary into cash, to the extent of the cash received in that conversion.

Notwithstanding the foregoing, the 75% limitation referred to in clause (2) of Section 5.11(a) above shall be deemed satisfied with respect to any Asset Disposition in which the cash or Cash Equivalents portion of the consideration received therefrom, determined in accordance with the foregoing provision on an after-tax basis, is equal to or greater than what the after-tax proceeds would have been had such Asset Disposition complied with the aforementioned 75% limitation.

(i) The requirement of clause (3) of Section 5.11(b) above shall be deemed to be satisfied if an agreement (including a lease, whether a capital lease or an operating lease) committing to make the acquisitions or expenditures referred to therein is entered into by the Company or its Restricted Subsidiary within the specified time period and such Net Available Cash is subsequently applied in accordance with such agreement within six months following such agreement.

Section 5.12. Limitation on Affiliate Transactions.

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into, make, amend or conduct any transaction (including making a payment to, the purchase, sale, lease or exchange of any property or the rendering of any service), contract, agreement or understanding with or for the benefit of any Affiliate of the Company (an "Affiliate Transaction") involving aggregate consideration to or from the Company or a Restricted Subsidiary in excess of $10.0 million unless:

(1) the terms of such Affiliate Transaction are not materially less favorable to the Company or such Restricted Subsidiary, as the case may be, than those that could reasonably be expected to be obtained in a comparable transaction at the time of such transaction in arm's-length dealings with a Person who is not such an Affiliate; and

(2) either: (a) if such Affiliate Transaction involves an aggregate consideration in excess of $20.0 million but not greater than $50.0 million, the Company delivers to the Trustee an Officers' Certificate certifying that such Affiliate Transaction satisfies the criteria in Section 5.12(a)(1) above, or (b) if such Affiliate Transaction involves an aggregate consideration in excess of $50.0 million, the Company delivers to the Trustee an Officers' Certificate certifying that such Affiliate Transaction satisfies the criteria in Section 5.12(a)(1) above and that the terms of such transaction have been approved by a majority of the members of the Board of Directors of the Company having no personal pecuniary interest in such transaction.

(b) Section 5.12(a) shall not apply to and does not prohibit:

(1) any Restricted Payment permitted to be made pursuant to Section 5.08 or any Permitted Investment;

(2) any issuance of Capital Stock (other than Disqualified Stock), or other payments, awards or grants in cash, Capital Stock (other than Disqualified Stock) or otherwise

pursuant to, or the funding of, employment or severance agreements and other compensation arrangements, options to purchase Capital Stock (other than Disqualified Stock) of the Company, restricted stock plans, long-term incentive plans, stock appreciation rights plans, participation plans or similar employee benefits plans and/or insurance and indemnification arrangements provided to or for the benefit of directors and employees approved by the Board of Directors of the Company;

(3) loans or advances to employees, officers or directors in the ordinary course of business of the Company or any of its Restricted Subsidiaries not to exceed $5.0 million in the aggregate at any one time outstanding;

(4) advances to or reimbursements of employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business of the Company or any of its Restricted Subsidiaries;

(5) any transaction between the Company and a Restricted Subsidiary or between Restricted Subsidiaries, and Guarantees issued by the Company or a Restricted Subsidiary for the benefit of the Company or a Restricted Subsidiary, as the case may be, in accordance with Section 5.07;

(6) any transaction with a joint venture or similar entity (other than an Unrestricted Subsidiary) that would constitute an Affiliate Transaction solely because the Company or a Restricted Subsidiary owns, directly or indirectly, an Equity Interest in or otherwise controls such joint venture or similar entity;

(7) the issuance or sale of any Capital Stock (other than Disqualified Stock) of the Company to, or the receipt by the Company of any capital contribution from its stockholders;

(8) indemnities of officers, directors and employees of the Company or any of its Restricted Subsidiaries permitted by bylaw or statutory provisions and any employment agreement or other employee compensation plan or arrangement entered into in the ordinary course of business by the Company or any of its Restricted Subsidiaries;

(9) the payment of reasonable compensation and fees paid to, and indemnity provided on behalf of, present and future officers or directors of the Company or any Restricted Subsidiary;

(10) the performance of obligations of the Company or any of its Restricted Subsidiaries under the terms of any agreement to which the Company or any of its Restricted Subsidiaries is a party as of or on the Issue Date, as these agreements may be amended, modified, supplemented, extended or renewed from time to time; provided, however, that any future amendment, modification, supplement, extension or renewal entered into after the Issue Date will be permitted only to the extent that its terms are not materially more disadvantageous, taken as a whole, to the Holders of the Notes than the terms of the agreements in effect on the Issue Date;

(11) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Indenture, provided that in the reasonable determination of the Board of Directors of the Company or the senior management of the Company, such transactions are on terms not materially less favorable to the Company or the relevant Restricted Subsidiary than those that could reasonably be expected to be obtained in a comparable transaction at such time on an arm's-length basis from a Person that is not an Affiliate of the Company;

(12) transactions with a Person (other than an Unrestricted Subsidiary) that is an Affiliate of the Company solely because the Company owns, directly or through a Restricted Subsidiary, an Equity Interest in such Person; and

(13) transactions between the Company or any Restricted Subsidiary and any Person, a director of which is also a director of the Company or any direct or indirect parent company of the Company, and such director is the sole cause for such Person to be deemed an Affiliate of the Company or any Restricted Subsidiary; provided, however, that such director shall abstain from voting as a director of the Company or such direct or indirect parent company, as the case may be, on any matter involving such other Person.

Section 5.13. Future Subsidiary Guarantors.

The Company will cause any Restricted Subsidiary that is not already a Subsidiary Guarantor that Guarantees any Indebtedness of the Company or a Subsidiary Guarantor under a Credit Facility to execute and deliver to the Trustee, within 30 days after such Subsidiary Guarantees such Indebtedness, (a) a supplemental indenture (in substantially the form specified in Exhibit E to this Indenture) (each a "Guarantor Supplemental Indenture") pursuant to which such Subsidiary will unconditionally Guarantee, on a joint and several basis, the full and prompt payment of the principal of, premium, if any, and interest on, the Notes on a senior basis and (b) joinders to, or new Security Documents, to create Liens on Collateral required by the Parity Lien Documents, and take all actions required by the Security Documents to perfect the Liens created thereunder. Any such Subsidiary Guarantee will be subject to the release and other provisions of Article Eleven.

Section 5.14. Business Activities.

The Company will not, and will not permit any of its Restricted Subsidiaries to, engage in any business activity other than the Oil and Gas Business, except to such extent as would not be material to the Company and its Restricted Subsidiaries taken as a whole.

Section 5.15 Offer to Repurchase Upon a Change of Control.

(a) If a Change of Control Triggering Event occurs, unless the Company has previously or concurrently exercised its right to redeem all of the Notes pursuant to Section 4.07, each Holder will have the right to require the Company to repurchase all or any part (equal to $2,000 or an integral multiple of $1,000 in excess of $2,000) of such Holder's Notes at a purchase price in cash equal to 101% of the principal amount of the Notes plus accrued and

unpaid interest, if any, to, but excluding, the date of purchase (subject to the right of Holders of record on the relevant record date to receive interest due on the Interest Payment Date).

(b) Within 30 days following any Change of Control Triggering Event, unless the Company has previously or concurrently exercised its right to redeem all of the Notes pursuant to Section 4.07, the Company shall mail a notice (the "Change of Control Offer") to each Holder of Notes, with a copy to the Trustee, stating, among other things:

(1) that a Change of Control Triggering Event has occurred and that such Holder has the right to require the Company to purchase such Holder's Notes at a purchase price in cash equal to 101% of the principal amount of such Notes plus accrued and unpaid interest, if any, to, but excluding, the date of purchase (subject to the right of Holders of record on the relevant record date to receive interest due on the Interest Payment Date) (the "Change of Control Payment");

(2) the repurchase date (which shall be no earlier than 30 days nor later than 60 days from the date such notice is sent) (the "Change of Control Payment Date");

(3) that any Note not properly tendered will remain outstanding and continue to accrue interest;

(4) that unless the Company defaults in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest on the Change of Control Payment Date;

(5) that Holders electing to have any Notes in certificated form purchased pursuant to a Change of Control Offer will be required to surrender such Notes, with the form entitled "Option of Holder to Elect Purchase" on the reverse of such Notes completed, to the Paying Agent specified in the notice at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;

(6) that Holders will be entitled to withdraw their tendered Notes and their election to require the Company to purchase such Notes, *provided,* that the Paying Agent receives, not later than the close of business on the third Business Day preceding the Change of Control Payment Date, an electronic transmission or letter complying with the requirements of Section 5.15(f) below;

(7) that if the Company is repurchasing a portion of the Note of any Holder, the Holder will be issued a new Note equal in principal amount to the unpurchased portion of the Note surrendered; *provided,* that the unpurchased portion of the Note must be equal to a minimum principal amount of $2,000 and an integral multiple of $1,000 in excess of $2,000; and

(8) other procedures determined by the Company, consistent with this Indenture, that a Holder must follow to have its Notes repurchased.

(c) On the Change of Control Payment Date, the Company will, to the extent lawful:

(1) accept for payment all Notes or portions of Notes (in a minimum principal amount of $2,000 and integral multiples of $1,000 in excess of $2,000) properly tendered pursuant to the Change of Control Offer and not properly withdrawn;

(2) deposit with the paying agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes accepted for payment, *provided, however*, that the funds once deposited are to be uninvested until disbursed pursuant to this Section 5.15; and

(3) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officers' Certificate stating the aggregate principal amount of Notes or portions of Notes being purchased by the Company.

(d) The Paying Agent will promptly send or deliver to each Holder of Notes accepted for payment the Change of Control Payment for such Notes, and the Trustee will promptly authenticate and mail (or cause to be transferred by book entry) to each Holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; *provided,* that each such new Note will be in a minimum principal amount of $2,000 or an integral multiple of $1,000 in excess of $2,000.

(e) If the Change of Control Payment Date is on or after an interest record date and on or before the related Interest Payment Date, any accrued and unpaid interest, will be paid to the Person in whose name a Note is registered at the close of business on such record date, and no further interest will be payable to Holders who tender their Notes pursuant to the Change of Control Offer.

(f) A tender made in response to a Change of Control Offer may be withdrawn if the Company receives, not later than the third Business Day prior to the Change of Control Payment Date, an electronic transmission, facsimile transmission or letter, specifying, as applicable: (1) the name of the Holder; (2) the certificate number of the Note in respect of which such notice of withdrawal is being submitted; (3) the principal amount of the Note (which shall be $2,000 or whole multiples of $1,000 in excess thereof) delivered for purchase by the Company as to which such notice of withdrawal is being submitted; (4) a statement that such Holder is withdrawing such Holder's election to have such principal amount of such Note purchased; and (5) the principal amount, if any, of such Note (which shall be $2,000 or whole multiples of $1,000 in excess thereof) that remains subject to the original Change of Control Offer and that has been or will be delivered for purchase by the Company.

(g) The Trustee and the Paying Agent shall return to the Company, upon its request, any cash that remains unclaimed for two years after a Change of Control Payment Date together with interest or dividends, if any, thereon (subject to Section 8.01(f)), held by them for the payment of the Change of Control Payment; and the Holder of such tendered and accepted Note shall thereafter look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such cash, and all liability of the Company as trustee thereof, shall thereupon cease; *provided*, *however*, that the Trustee or such Paying Agent, before being required to make any such repayment, shall at the expense of the Company comply with the SEC

Regulation 17AD-17 as it applies to lost bondholders; *provided, further however*, that (x) to the extent that the aggregate amount of cash deposited by the Company pursuant to Section 5.15(c)(2) exceeds the aggregate Change of Control Payment of the Notes or portions thereof to be purchased, then the Trustee shall hold such excess for the Company and (y) unless otherwise directed by the Company in writing, promptly after the Business Day following the Change of Control Payment Date the Trustee shall return any such excess to the Company together with interest, if any, thereon (subject to Section 8.01(f)).

(h) The Company shall comply, to the extent applicable, with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws or regulations in connection with a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with this Section 5.15, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 5.15 by virtue of such conflict.

(i) Notwithstanding the foregoing, the Company shall not be required to make a Change of Control Offer (i) upon a Change of Control Triggering Event if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Company and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer or (ii) if notice of redemption for 100% of the aggregate principal amount of the outstanding Notes has been given pursuant to Section 4.07, unless and until there is a default in payment of the applicable redemption price.

(j) If Holders of not less than 90% of the aggregate principal amount of the outstanding Notes validly tender their Notes and do not withdraw such Notes in a Change of Control Offer and the Company, or any third party making a Change of Control Offer in lieu of the Company pursuant to Section 5.15(i) above, purchases all of the Notes that are validly tendered and not withdrawn by such Holders, the Company will have the right, upon not less than 30 nor more than 60 days' prior notice, given not more than 30 days following the purchase pursuant to the Change of Control Offer described under this Section 5.15, to redeem all of the Notes that remain outstanding following such purchase at a redemption price in cash equal to the applicable Change of Control Payment plus, to the extent not included in the Change of Control Payment, accrued and unpaid interest, if any, to, but excluding, the date of redemption.

(k) A Change of Control Offer may be made in advance of a Change of Control Triggering Event, and conditioned upon the occurrence of a Change of Control Triggering Event, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

Section 5.16. Suspension of Covenants.

In the event that at any time an Investment Grade Rating Event has occurred, the provisions of this Indenture described under Sections 5.07, 5.08, 5.10, 5.11 and 5.12 (collectively, the "Suspended Covenants") will be suspended. In addition, the Company will no longer be subject to the financial test set forth in Section 6.01(a)(3). During any period that the

Suspended Covenants have been suspended (the "Suspension Period"), the Company may not designate any of its Subsidiaries as Unrestricted Subsidiaries pursuant to the second sentence of the definition of "Unrestricted Subsidiary."

Notwithstanding the foregoing, if the ratings assigned to the Notes by each Rating Agency should subsequently decline to below an Investment Grade Rating, the Suspended Covenants will be reinstated as of and from the date that the Notes no longer had an Investment Grade Rating. Calculations under reinstated covenants in Section 5.08 of this Indenture will be made as if such covenants had been in effect since the Issue Date except that no default will be deemed to have occurred solely by reason of a Restricted Payment made while that covenant was suspended. Furthermore, all Indebtedness incurred, or Disqualified Stock or Preferred Stock issued, during the Suspension Period will be deemed to have been incurred or issued pursuant to clause (5) of the definition of "Permitted Debt."

In addition, for purposes of Section 5.12 of this Indenture, all agreements and arrangements entered into by the Company or any Restricted Subsidiary with an Affiliate of the Company during the Suspension Period will be deemed to have been entered into prior to the Issue Date and permitted by clause Section 5.12(b)(10) of this Indenture, and for purposes of Section 5.10 of this Indenture, all contracts entered into during the Suspension Period that contain any of the restrictions contemplated by such covenant will be deemed to have been existing on the Issue Date.

ARTICLE SIX
SUCCESSORS

Section 6.01. Merger and Consolidation.

(a) The Company will not consolidate with or merge with or into (whether or not the Company is the surviving corporation), or convey, transfer or lease all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, in one or more related transactions to, any Person, unless:

(1) the resulting, surviving or transferee Person (the "Successor Company") is a corporation, partnership, trust or limited liability company organized and existing under the laws of the United States of America, any State of the United States or the District of Columbia and the Successor Company (if not the Company) expressly assumes, by supplemental indenture, executed and delivered to the Trustee, all the obligations of the Company under the Note Documents;

(2) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Company or any Subsidiary of the Successor Company as a result of such transaction as having been Incurred by the Successor Company or such Subsidiary at the time of such transaction), no Default or Event of Default shall have occurred and be continuing;

(3) either (A) immediately after giving effect to such transaction, the Successor Company would be able to Incur at least an additional $1.00 of Indebtedness pursuant to Section 5.07(a), or (B) immediately after giving effect to such transaction on a pro forma basis and any related financing transactions as if the same had occurred at the beginning of the applicable four quarter period, the Consolidated Coverage Ratio of the Company is equal to or greater than the Consolidated Coverage Ratio of the Company immediately before such transaction;

(4) if the Company is not the Successor Company, each Subsidiary Guarantor (unless it is the other party to the transactions above, in which case Section 6.01(a)(1) above shall apply) shall have by supplemental indenture confirmed that its Subsidiary Guarantee shall apply to such Person's obligations in respect of this Indenture and the Notes shall continue to be in effect;

(5) the Successor Company takes such action (or agrees to take such action) as may be necessary to cause any property or assets that constitute Collateral owned by or transferred to the Successor Company to be subject to the Parity Liens in the manner and to the extent required under the Note Documents, and shall deliver an Opinion of Counsel to the Collateral Trustee as to the enforceability of any amendments, supplements or other instruments with respect to the Note Documents to be executed, delivered, filed and recorded, as applicable, and such other matters as the Trustee or Collateral Trustee, as applicable, may reasonably request; and

(6) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease does not violate the terms of each applicable Parity Lien Document, and that all conditions precedent provided for in the indenture relating to such consolidation, merger, conveyance, transfer or lease have been complied with.

For purposes of this Section 6.01, the sale, lease, conveyance, assignment, transfer or other disposition of all or substantially all of the properties and assets of one or more Subsidiaries of the Company, which properties and assets, if held by the Company instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Company on a consolidated basis, shall be deemed to be the transfer of all or substantially all of the assets of the Company.

(b) The Company shall not permit any Subsidiary Guarantor to consolidate with or merge with or into, and will not permit the conveyance, transfer or lease of all or substantially all of the assets of any Subsidiary Guarantor to, any Person (other than the Company or another Subsidiary Guarantor) unless:

(1) (a) the resulting, surviving or transferee Person is a corporation, partnership, trust or limited liability company organized and existing under the laws of the United States of America, any State of the United States or the District of Columbia and such Person (if not such Subsidiary Guarantor) expressly assumes, by supplemental indenture, executed and delivered to the Trustee, all the obligations of such Subsidiary Guarantor under its

Subsidiary Guarantee; (b) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the resulting, surviving or transferee Person or any Restricted Subsidiary as a result of such transaction as having been Incurred by such Person or such Restricted Subsidiary at the time of such transaction), no Default shall have occurred and be continuing; and (c) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indenture (if any) do not violate the terms of each applicable Parity Lien Document, and that all conditions precedent provided for in the indenture relating to such consolidation, merger or transfer and such supplemental indenture (if any) have been complied with; or

(2) the transaction will result in the release and discharge of the Subsidiary Guarantor from its obligations under this Indenture and its Subsidiary Guarantee after and upon compliance with Section 11.04.

(c) Notwithstanding Section 6.01(a)(3), (x) any Restricted Subsidiary may consolidate with, merge into or transfer all or part of its properties and assets to the Company and the Company may consolidate with, merge into or transfer all or part of its properties and assets to a Subsidiary Guarantor and (y) the Company may merge with an Affiliate incorporated solely for the purpose of reincorporating the Company in another jurisdiction; and provided further that, in the case of a Restricted Subsidiary that consolidates with, merges into or transfers all or part of its properties and assets to the Company, the Company will not be required to comply with Section 6.01(a)(5).

(d) Upon any consolidation of the Company with, or merger of the Company into, any other Person or any conveyance, transfer or lease of all or substantially all of the assets of the Company in accordance with Section 6.01(a), the Successor Company shall succeed to, and be substituted for, and may exercise every right and power of, the Company, under this Indenture with the same effect as if such successor Person has been named as the Company herein, and thereafter, except in the case of a lease of all or substantially all of its assets, the predecessor Person shall be released from the obligation to pay the principal of and interests on the Notes and all other covenants and obligations under this Indenture.

ARTICLE SEVEN
DEFAULTS AND REMEDIES

Section 7.01. Events of Default.

An "Event of Default" shall occur if:

(a) there shall be a default in the payment of any interest on any Note when it becomes due and payable, and such default shall continue for a period of 30 days;

(b) there shall be a default in the payment of the principal of (or premium, if any, on) any Note when due at its Stated Maturity, upon optional redemption, upon required repurchase, upon declaration of acceleration or otherwise;

(c) there shall be a default in the performance or breach of the provisions of Article Six;

(d) there shall be a failure by the Company to comply for 30 days (or 180 days in the case of a Reporting Failure) after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the outstanding Notes a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder, with any of its obligations under Sections 5.07 through Section 5.15 (in each case, other than a failure to purchase the Notes which will constitute an Event of Default under Section 7.01(b) above and other than a failure to comply with Article Six, which is covered by Section 7.01(c));

(e) there shall be a failure by the Company to comply with any agreement in this Indenture (other than an agreement, a default in or failure to comply that is specifically dealt with elsewhere in this Section 7.01) and continuance of such default for 60 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the outstanding Notes a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder;

(f) there shall be any default under any mortgage, indenture or instrument under which there is issued or by which there is secured or evidenced any Indebtedness for money borrowed by the Company or any of its Restricted Subsidiaries (or the payment of which is Guaranteed by the Company or any of its Restricted Subsidiaries), other than Indebtedness owed to the Company or a Restricted Subsidiary, whether such Indebtedness or Guarantee now exists, or is created after the Issue Date, which default: (1) is caused by a failure to pay principal of, or interest or premium, if any, on such Indebtedness prior to the expiration of the grace period provided in such Indebtedness (and any extensions of any grace period) (a "payment default") or (2) results in the acceleration of such Indebtedness prior to its Stated Maturity and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a payment default or the maturity of which has been so accelerated, aggregates $50.0 million or more;

(g) the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary, or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary, pursuant to or within the meaning of any Bankruptcy Law:

(1) commences a voluntary case or proceeding to be adjudicated a bankrupt or insolvent;

(2) consents to the entry of an order for relief against it in an involuntary case or proceeding or to the commencement of any case or proceeding;

(3) files a petition or answer or consent seeking reorganization or relief under any applicable Bankruptcy Law;

(4) consents to the filing of such petition or to the appointment of or the taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any substantial part of its property; or

(5) makes a general assignment for the benefit of creditors or the admission in writing of its inability to pay its debts generally as they become due;

(h) a court of competent jurisdiction enters a final order or decree under any Bankruptcy Law that:

(1) is for relief against the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary in an involuntary case;

(2) adjudges the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary a bankrupt or insolvent;

(3) approves as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary;

(4) appoints a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary, or of any substantial part of their property;

(5) orders the winding up or liquidation of the Company's or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary's, affairs,

and the final order or decree remains unstayed and in effect for 60 consecutive days;

(i) the failure by the Company or any Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries), would constitute a Significant Subsidiary to pay final judgments aggregating in excess of $50.0 million (to the extent not covered by insurance by a reputable and creditworthy insurer as to which the insurer has not disclaimed coverage), which judgments are not paid or discharged, and there shall be any period of 60 consecutive days following entry of such final judgment or decree during which a stay of enforcement of such final judgment or decree, by reason of pending appeal or otherwise, shall not be in effect;

(j) any Subsidiary Guarantee of a Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries) would constitute a Significant Subsidiary, ceases to be

in full force and effect (except as contemplated by the terms of this Indenture) or is declared null and void in a judicial proceeding or any Subsidiary Guarantor that is a Significant Subsidiary or group of Subsidiary Guarantors that, taken together (as of the latest audited consolidated financial statements of the Company and its Restricted Subsidiaries) would constitute a Significant Subsidiary, denies or disaffirms its obligations under this Indenture or its Subsidiary Guarantee; or

(k) the occurrence of any of the following:

(1) except as permitted by the Note Documents, any Note Document establishing the Parity Liens ceases for any reason to be enforceable; *provided*, *however,* that if such failure is susceptible to cure, no Event of Default shall arise with respect thereto until 30 days after any officer of the Company or any Restricted Subsidiary becomes aware of such failure, which failure has not been cured during such time period; and *provided further*, *however*, that it will not be an Event of Default under this Section 7.01(k)(1) if the sole result of the failure of one or more Note Documents to be fully enforceable is that any Parity Lien purported to be granted under such Note Documents on Collateral, individually or in the aggregate, having a Fair Market Value of not more than $50.0 million, ceases to be an enforceable and perfected Parity Lien;

(2) except as permitted by the Note Documents, any Parity Lien purported to be granted under any Note Document on Collateral, individually or in the aggregate, having a Fair Market Value in excess of $50.0 million, ceases to be an enforceable and perfected second-priority Lien, subject to the Intercreditor Agreement and Permitted Liens; *provided* that if such failure is susceptible to cure, no Event of Default shall arise with respect thereto until 30 days after any officer of the Company or any Restricted Subsidiary becomes aware of such failure, which failure has not been cured during such time period; and

(3) the Company or any Subsidiary Guarantor, or any Person validly acting on behalf of any of them, denies or disaffirms, in writing, any obligation of the Company or any Subsidiary Guarantor set forth in or arising under any Note Document establishing Parity Liens.

Notwithstanding the foregoing, if an Event of Default specified in Section 7.01(f) above shall have occurred and be continuing, such Event of Default and any consequential acceleration (to the extent not in violation of any applicable Legal Requirements or in conflict with any judgment or decree of a court of competent jurisdiction) shall be automatically rescinded if (i) the Indebtedness that is the subject of such Event of Default has been repaid, or (ii) if the default relating to such Indebtedness is waived by the holders of such Indebtedness or cured and if such Indebtedness has been accelerated, then the holders thereof have rescinded their declaration of acceleration in respect of such Indebtedness, in each case within 20 days after the declaration of acceleration with respect thereto.

Without limiting the generality of the foregoing, it is understood and agreed that if the Notes are accelerated or otherwise become due prior to their stated maturity, in each case, as a result of an Event of Default (including, but not limited to, an Event of Default specified in clause 7.01(g) above (including the acceleration of any portion of the Indebtedness evidenced by

the Notes by operation of law)), the Applicable Premium or the amount by which the applicable redemption price exceeds the principal amount of the Notes (the "Redemption Price Premium"), as applicable, with respect to an optional redemption of the Notes shall also be due and payable as though the Notes had been optionally redeemed on the date of such acceleration and shall constitute part of the Obligations with respect to the Notes in view of the impracticability and difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Holder's lost profits as a result thereof. If the Applicable Premium or the Redemption Price Premium, as applicable, becomes due and payable, it shall be deemed to be principal of the Notes and interest shall accrue on the full principal amount of the Notes (including the Applicable Premium or the Redemption Price Premium, as applicable) from and after the applicable triggering event, including in connection with an Event of Default specified in clause 7.01(g) above. The premium shall also be payable in the event the Notes or the indenture are satisfied, released or discharged through foreclosure, whether by judicial proceeding, deed in lieu of foreclosure or by any other means. THE COMPANY WILL EXPRESSLY WAIVE (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING PREMIUM IN CONNECTION WITH ANY SUCH ACCELERATION. The Company expressly agrees (to the fullest extent it may lawfully do so) that: (A) the premium is reasonable and is the product of an arm's length transaction between sophisticated business entities ably represented by counsel; (B) the premium shall be payable notwithstanding the then prevailing market rates at the time acceleration occurs; (C) there has been a course of conduct between the Holders and the Company giving specific consideration in this transaction for such agreement to pay the premium; and (D) the Company shall be estopped hereafter from claiming differently than as agreed to in this paragraph. The Company expressly acknowledges that its agreement to pay the premium to the Holders as herein described is a material inducement to the Holders to purchase the Notes.

Section 7.02. Acceleration.

(a) If an Event of Default (other than as specified in Sections 7.01(g) or (h)) shall occur and be continuing with respect to this Indenture, the Trustee or the Holders of not less than 25% in aggregate principal amount of the Notes then outstanding may, and the Trustee at the request of such Holders shall, declare all unpaid principal of, premium, if any, and accrued interest on all Notes to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by the Holders of the Notes) and upon any such declaration, such principal, premium, if any, and interest shall become due and payable immediately. If an Event of Default specified in Sections 7.01(g) or (h) occurs and is continuing, the principal of, premium, if any, accrued and unpaid interest, if any, on all the Notes will become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holders.

(b) After a declaration of acceleration, the Holders of a majority in aggregate principal amount of Notes outstanding by notice to the Company and the Trustee, on behalf of the Holders of Notes, may rescind and annul such declaration and its consequences if:

(1) the Company has paid or deposited with the Trustee a sum sufficient to pay (A) all sums paid or advanced by the Trustee under this Indenture and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, (B) all overdue interest on all Notes then outstanding, and (C) the principal of, and premium, if any, on any Notes then outstanding which have become due otherwise than by such declaration of acceleration and interest thereon at the rate borne by the Notes;

(2) the rescission would not conflict with any judgment or decree of a court of competent jurisdiction; and

(3) all Events of Default, other than the non-payment of principal of, premium, if any, and interest on the Notes which have become due solely by such declaration of acceleration, have been cured or waived as provided in this Indenture.

(c) No such rescission shall affect any subsequent default or impair any right consequent thereon.

Section 7.03. Other Remedies.

(a) If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal, premium, if any, or interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

(b) The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy accruing upon and during the continuance of an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

Section 7.04. Waiver of Past Defaults.

The Holders of not less than a majority in aggregate principal amount of the Notes outstanding, by written notice to the Trustee and the Company, may on behalf of the Holders of all outstanding Notes waive any existing Default or Event of Default under this Indenture and its consequences, except a continuing Default or Event of Default (1) in the payment of the principal of, premium, if any, or interest on, any Note (which may only be waived with the consent of each Holder of Notes affected), or (2) in respect of a covenant or provision which under this Indenture cannot be modified or amended without the consent of the Holder of each Note affected by such modification or amendment. In case of any such waiver, the Company, the Trustee and the Holders shall be restored to their former positions and rights hereunder and under the Notes, respectively. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 7.05. Control by Majority.

Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on the Trustee, or waive any existing Default or Event of Default. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines may be unduly prejudicial to the rights of other Holders of Notes or that may involve the Trustee in personal liability.

Section 7.06. Limitation on Suits.

Subject to Section 7.07 and Section 8.01, no Holder of any of the Notes has any right to institute any proceedings with respect to the Note Documents or any remedy thereunder, unless (1) such Holder has previously given the Trustee written notice that an Event of Default with respect to Notes has occurred and is continuing, (2) the Holders of at least 25% in aggregate principal amount of the outstanding Notes have made written request to the Trustee to institute a proceeding or pursue a remedy, (3) such Holders have offered security or indemnity to the Trustee to institute such proceeding or pursue such remedy as Trustee under the Notes and this Indenture, (4) the Trustee has failed to institute such proceeding or pursue such remedy within 60 days after receipt of such notice and such offer of security or indemnity, and (5) the Trustee, within such 60-day period, has not received directions inconsistent with such written request by Holders of a majority in aggregate principal amount of the outstanding Notes.

Section 7.07. Rights of Holders of Notes to Receive Payment.

Notwithstanding any other provision of this Indenture, the right of any Holder of a Note to receive payment of principal, premium, if any, or interest on, such Note, on or after the respective due dates expressed in such Note (including in connection with an offer to purchase), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 7.08 Collection Suit by Trustee.

If an Event of Default specified in Section 7.01(a) or (b) above occurs with respect to the Notes and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Company for the whole amount of overdue principal of, premium, if any, or interest remaining unpaid on, the Notes and to the extent lawful, interest on overdue principal, premium, if any, and interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

Section 7.09 Trustee May File Proofs of Claim.

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents

and counsel) and the Holders of the Notes allowed in any judicial proceedings relative to the Company or any Subsidiary Guarantor (or any other obligor upon the Notes), its creditors or its property and shall be entitled and empowered to collect, receive and distribute any money or other securities or property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 8.07. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 8.07 out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 7.10. Priorities.

(a) If the Trustee collects any money or other property pursuant to this Article Seven, it shall pay out the money and other property in the following order:

First: to the Trustee, its agents and attorneys for amounts due under Section 8.07, including payment of all compensation, expense and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

Second: to Holders of Notes for amounts due and unpaid on the Notes for principal, premium, if any, and interest ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any, and interest, respectively; and

Third: to the Company or to such party as a court of competent jurisdiction shall direct.

(b) The Trustee may fix a record date and payment date for any payment to Holders of Notes pursuant to this Section 7.10.

Section 7.11. Undertaking for Costs.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith

of the claims or defenses made by the party litigant. This Section 7.11 does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 7.07, or a suit by Holders of more than ten percent in principal amount of the then outstanding Notes.

ARTICLE EIGHT
TRUSTEE

Section 8.01. Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default:

(1) the duties of the Trustee shall be determined solely by the express provisions of this Indenture and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine the certificates and opinions to determine whether or not they conform on their face to the requirements of this Indenture.

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(1) this paragraph does not limit the effect of paragraph (b) of this Section 8.01;

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 7.05.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b) and (c) of this Section 8.01.

(e) No provision of this Indenture shall require the Trustee to expend or risk its own funds or incur any liability. The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders unless such Holders shall have offered to the Trustee security or indemnity satisfactory to it against the

costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

(f) Money held in trust by the Trustee need not be segregated from other funds and need not be held in an interest-bearing account, in each case except to the extent required by law or by any other provision of this Indenture. The Trustee (acting in any capacity hereunder) shall not be liable for interest on any money received by it hereunder unless the Trustee otherwise agrees in writing with the Company.

Section 8.02. Certain Rights of Trustee.

(a) The Trustee may conclusively rely upon any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel. The Trustee may consult with counsel and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company shall be sufficient if signed by an Officer of the Company.

(f) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction. In no event shall the Trustee be liable to any Person for special, punitive, indirect, consequential or incidental loss or damage of any kind whatsoever (including, but not limited to, lost profits) for any action it takes or omits to take, even if the Trustee has been advised of the likelihood of such loss or damage.

(g) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of such event is sent to the Trustee in accordance with Section 13.02, and such notice references the Notes.

(h) Subject to Section 8.01(b)(2), the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit.

(i) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and to each agent, custodian and other Person employed to act hereunder.

Section 8.03. Individual Rights of Trustee.

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may become a creditor of, or otherwise deal with, the Company or any of its Affiliates with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest while any Default exists, it must eliminate such conflict within 90 days or resign as Trustee. Any Agent may do the same with like rights and duties. The Trustee is also subject to Section 8.10.

Section 8.04. Trustee's Disclaimer.

The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture, it shall not be accountable for the Company's use of the proceeds from the Notes or any money paid to the Company or upon the Company's direction under any provision of this Indenture, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of authentication.

Section 8.05. Notice of Default.

If a Default or Event of Default occurs and is continuing and if it is known to the Trustee, the Trustee shall mail to each Holder of Notes a notice of the Default or Event of Default within 90 days after the Trustee gains knowledge of the Default or Event of Default unless such Default or Event of Default shall have been cured or waived before the giving of such notice. Except in the case of a Default or Event of Default in payment of principal of, premium, if any, or interest on, any Note, the Trustee may withhold the notice if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of the Holders of the Notes.

Section 8.06. [Reserved].

Section 8.07. Compensation and Indemnity.

(a) The Company shall pay to the Trustee (in its capacity as Trustee, and, to the extent it has been appointed as such, as Paying Agent and Registrar) from time to time reasonable compensation for its acceptance of this Indenture and services hereunder in accordance with a written schedule provided by the Trustee to the Company from time to time; provided if it should become necessary to perform extraordinary services, the Trustee shall be entitled to reasonable additional compensation therefor and reimbursement of related extraordinary expenses. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee promptly upon request for all reasonable disbursements, advances and reasonable out-of-pocket expenses incurred or made by it in addition to the compensation for its services, except those resulting from its own gross negligence, willful misconduct or bad faith. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel. The Trustee shall provide the Company notice of any expenditure not in the ordinary course of business.

(b) The Company shall indemnify the Trustee in its capacity against any and all losses, liabilities, damages, claims or reasonable out-of-pocket expenses incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, including the costs and expenses of enforcing this Indenture against the Company or any Subsidiary Guarantor (including this Section 8.07) and defending itself against any claim (whether asserted by the Company, any Subsidiary Guarantor or any Holder or any other person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, except to the extent any such loss, liability or expense may be attributable to its gross negligence, willful misconduct or bad faith. The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company shall not relieve the Company of its obligations hereunder. The Company shall defend the claim and the Trustee shall cooperate in the defense. The Trustee may elect to have separate counsel defend the claim, but the Company will be obligated to pay the reasonable fees and expenses of such separate counsel only if the Company fails to assume the Trustee's defense or there is a conflict of interest between the Company, on the one hand, and the Trustee, on the other hand, with respect to the claim, as reasonably determined by the Trustee. The Company need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld.

(c) The obligations of the Company under this Section 8.07 shall survive the satisfaction and discharge of this Indenture.

(d) To secure the Company's payment obligations in this Section 8.07, the Trustee shall have a Lien prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay principal of, premium, if any, and interest on, particular Notes. Such Lien shall survive the satisfaction and discharge of this Indenture and the resignation or removal of the Trustee.

(e) When the Trustee incurs expenses or renders services after an Event of Default specified in Sections 7.01(g) or (h) occurs, the expenses and the compensation for the services

(including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

Section 8.08. Replacement of Trustee.

(a) A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 8.08.

(b) The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Company. The Holders of a majority in principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Company in writing. The Company may remove the Trustee if:

(1) the Trustee fails to comply with Section 8.10;

(2) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(3) a custodian or public officer takes charge of the Trustee or its property; or

(4) the Trustee becomes incapable of acting.

(c) If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the then outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Company.

(d) If a successor Trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company, or the Holders of Notes of at least 10% in principal amount of the then outstanding Notes may petition at the expense of the Company any court of competent jurisdiction for the appointment of a successor Trustee.

(e) If the Trustee, after written request by any Holder who has been a Holder for at least three months, fails to comply with Section 8.10, such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(f) A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, *provided,* that all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 8.07. Notwithstanding replacement of the Trustee pursuant to this Section 8.08, the Company's obligations under Section 8.07 shall continue for the benefit of the retiring Trustee.

Section 8.09. Successor Trustee by Merger, Etc.

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another Person, the successor Person without any further act shall be the successor Trustee.

Section 8.10. Eligibility; Disqualification.

There shall at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trust powers, that is subject to supervision or examination by federal or state authorities and that has (or its corporate parent shall have) a combined capital and surplus of at least $100.0 million as set forth in its most recent published annual report of condition.

ARTICLE NINE
DEFEASANCE AND COVENANT DEFEASANCE

Section 9.01. Option to Effect Legal Defeasance or Covenant Defeasance.

The Company may, at its option and at any time, elect to have either Section 9.02 or 9.03 be applied to all outstanding Notes upon compliance with the conditions set forth below in this Article Nine.

Section 9.02. Legal Defeasance and Discharge.

Upon the Company's exercise under Section 9.01 of the option applicable to this Section 9.02, the Company shall, subject to the satisfaction of the conditions set forth in Section 9.04, be deemed to have been discharged from its obligations with respect to this Indenture and all outstanding Notes and all obligations of the Subsidiary Guarantors shall be deemed to have been discharged with respect to their obligations under this Indenture and the Guarantees on the date the conditions set forth below are satisfied (hereinafter, "Legal Defeasance"). For this purpose, Legal Defeasance means that the Company and the Subsidiary Guarantors shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes and related Guarantees, respectively, which shall thereafter be deemed to be "outstanding" only for the purposes of Section 9.05 and the other Sections of this Indenture referred to in clauses (a) and (b) of this Section 9.02, and shall be deemed discharged from the payment and performance of all other obligations under this Indenture, the Notes and the related Guarantees (and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging the same), except for the following provisions which shall survive until otherwise terminated or discharged hereunder: (a) the rights of Holders of outstanding Notes to receive solely from Funds in Trust (as defined in Section 9.04 and as more fully set forth in such Section) payments in respect of the principal of, premium, if any, and interest on such Notes when such payments are due, (b) subject to clause (a) of this Section 9.02, the Company's

obligations with respect to such Notes under Article Three and Section 5.02, (c) the rights, powers, trusts, duties and immunities of the Trustee hereunder and (d) this Article Nine. Subject to compliance with this Article Nine, the Company may exercise its option under this Section 9.02 notwithstanding the prior exercise of its option under Section 9.03. If the Company exercises its legal defeasance option pursuant to this Section 9.02, the Subsidiary Guarantees will terminate with respect to the Notes, and payment of the Notes may not be accelerated pursuant to Section 7.02 because of an Event of Default. Subject to compliance with this Article Nine, the Company may exercise its option (if any) to have this Section 9.02 applied to any Notes notwithstanding the prior exercise of its option (if any) to have Section 9.03 applied to such Notes.

Section 9.03. Covenant Defeasance.

Upon the Company's exercise under Section 9.01 of the option applicable to this Section 9.03, the Company shall, subject to the satisfaction of the conditions set forth in Section 9.04, be released from its obligations, and each Restricted Subsidiary shall be released from its obligations, under the covenants contained in Sections 5.07 through 5.15 and the limitations set forth in Section 6.01(a)(3) with respect to the outstanding Notes on and after the date the conditions set forth in Section 9.04 are satisfied (hereinafter, "Covenant Defeasance"), and the Notes shall thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes shall not be deemed outstanding for accounting purposes to the extent permitted by GAAP). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes, the Company and each Restricted Subsidiary may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 7.01, but, except as specified above, the remainder of this Indenture and such Notes shall be unaffected thereby. In addition, upon the Company's exercise under Section 9.01 of the option applicable to this Section 9.03, subject to the satisfaction of the conditions set forth in Section 9.04, (i) Sections 7.01(f), (g) and (h) (clauses (g) and (h) with respect to Significant Subsidiaries only), and Sections 7.01(i) and (j) shall not constitute Events of Default and (ii) payment of the Notes may not be accelerated because of an Event of Default specified in Sections 7.01(d), (e), (f), (g) or (h) (clauses (g) and (h) with respect to Significant Subsidiaries only), or Sections 7.01(i) and (j) or because of the failure of the Company to comply with Section 6.01(a)(3).

Section 9.04. Conditions to Legal Defeasance or Covenant Defeasance.

The following shall be the conditions to the application of either Section 9.02 or 9.03 to the outstanding Notes:

(a) the Company must irrevocably deposit or cause to be deposited with the Trustee, in trust, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of

the Notes, cash in United States dollars, Government Obligations, or a combination thereof ("Funds in Trust"), in such amounts as, in the aggregate, will be sufficient to pay and discharge the principal of, premium, if any, and interest on, the outstanding Notes on the Stated Maturity (or the applicable redemption date), if at or prior to electing either Legal Defeasance or Covenant Defeasance, the Company has delivered to the Trustee an irrevocable notice to redeem all of the outstanding Notes on such redemption date, and the Company must specify whether the Notes are being defeased to Stated Maturity or to a particular redemption date;

(b) in the case of Legal Defeasance, the Company shall have delivered to the Trustee an opinion of independent counsel in the United States having expertise in matters of United States federal income tax law that (A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (B) since the date of this Indenture, there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders and Beneficial Owners of the outstanding Notes will not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(c) in the case of Covenant Defeasance, the Company shall have delivered to the Trustee an opinion of independent counsel in the United States having expertise in matters of United States federal income tax law confirming that the Holders and Beneficial Owners of the outstanding Notes will not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(d) no Default or Event of Default shall have occurred and be continuing on the date of such deposit (other than an Event of Default or Default resulting from the incurrence of Indebtedness or Liens securing such Indebtedness, all or a portion of the proceeds of which will be applied to such deposit);

(e) such deposit shall not result in a breach of, or constitute a default under, any material agreement or instrument (other than this Indenture) to which the Company, any Subsidiary Guarantor or any Restricted Subsidiary is a party or by which it is bound or if such breach or default would occur, which is not waived as of, or for all purposes, on or after, the date of such deposit;

(f) the Company shall have delivered to the Trustee an Officers' Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders of the Notes or any related Guarantee over the other creditors of the Company or any Subsidiary Guarantor with the intent of defeating, hindering, delaying or defrauding creditors of the Company, any Subsidiary Guarantor or others; and

(g) the Company will have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for relating to the Legal Defeasance or the Covenant Defeasance, as the case may be, have been complied with.

Section 9.05. Deposited Money and U.S. Government Obligations to Be Held in Trust; Other Miscellaneous Provisions.

(a) Subject to Section 9.06, all money and Government Obligations (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 9.05, the "Trustee") pursuant to Section 9.04 in respect of the outstanding Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal. premium, if any, and interest, but such money need not be segregated from other funds except to the extent required by law.

(b) The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or Government Obligations deposited pursuant to Section 9.04 in respect of the outstanding Notes or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

(c) Anything in this Article Nine to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon the request of the Company any money or Government Obligations held by it as provided in Section 9.04 which, in the opinion of a nationally recognized firm of independent public accountants, investment bank, or appraisal firm expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 9.04(a)), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance with respect to the Notes.

Section 9.06. Repayment to the Company.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of, premium, if any, or interest on, any Note and remaining unclaimed for two years after such principal, premium, if any, or interest has become due and payable shall be paid to the Company upon its request or (if then held by the Company) shall be discharged from such trust; and the Holder of such Note shall thereafter look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease.

Section 9.07. Reinstatement.

If the Trustee or Paying Agent is unable to apply any United States dollars or Government Obligations in accordance with Section 9.02 or 9.03, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations to make the related payments under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 9.02 or 9.03 until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 9.02 or 9.03, as the case may be; *provided*, *however*, that, if the Company makes any payment of principal of, premium, if any, or interest on, any Note following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

ARTICLE TEN
AMENDMENT, SUPPLEMENT AND WAIVER

Section 10.01. Without Consent of Holders of Notes.

(a) Notwithstanding anything set forth in Section 10.02, the Company, any Subsidiary Guarantor and the Trustee may modify, supplement or amend this Indenture or the Notes without the consent of any Holder of a Note to:

(1) cure any ambiguity, omission, defect, mistake or inconsistency;

(2) provide for the assumption by a successor of the obligations of the Company or any Subsidiary Guarantor under this Indenture;

(3) provide for uncertificated Notes in addition to or in place of certificated Notes (provided that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code);

(4) add guarantors with respect to Notes, including Subsidiary Guarantors, or release a Subsidiary Guarantor from its Subsidiary Guarantee and terminate such Subsidiary Guarantee; provided that the release and termination is in accordance with the applicable provisions of this Indenture;

(5) make, complete or confirm any grant of Collateral permitted or required by any of the Note Documents, including to secure any Additional Parity Lien Debt (as defined in the Collateral Trust Agreement);

(6) add to the covenants of the Company or a Subsidiary Guarantor for the benefit of the Holders of the Notes or surrender any right or power conferred upon the Company or a Subsidiary Guarantor;

(7) make any change that does not adversely affect the rights of any Holder of the Notes; *provided*, *however*, that any change (a) to conform the Note Documents to the "Description of New Notes" in the Offering Memorandum and (b) to conform the text of the

Note Documents or any other such documents (in recordable form) as may be necessary or advisable to preserve and confirm the relative priorities of the Priority Lien Documents and the Parity Lien Documents as such priorities are contemplated by and set forth in the Intercreditor Agreement or the Collateral Trust Agreement, as applicable, will not be deemed in either case to adversely affect such legal rights;

(8) [Reserved.]

(9) [Reserved.]

(10) provide for the succession of a successor Trustee, provided that the successor Trustee is otherwise qualified and eligible to act as such under this Indenture;

(11) release, discharge, terminate or subordinate Liens on Collateral in accordance with the Note Documents and to confirm and evidence any such release, discharge, termination or subordination;

(12) make any changes with respect to the Note Documents, as provided in the Intercreditor Agreement or the Collateral Trust Agreement; or

(13) to make any change that would provide any additional rights or benefits to the Holders of Notes or that does not adversely affect the legal rights under this Indenture of any Holder in any material respect, including to comply with requirements of the SEC or DTC in order to maintain the transferability of the Notes pursuant to Rule 144A or Regulation S.

In addition, the Intercreditor Agreement and the Collateral Trust Agreement may be amended in accordance with their terms and without the consent of any Holder of Notes or the Trustee with the consent of the parties thereto or otherwise in accordance with their terms, including to add additional Indebtedness as Priority Lien Debt, Parity Lien Debt or Junior Lien Debt and add other parties (or any authorized agent thereof or trustee therefor) holding such Indebtedness thereto and to establish that the Liens on any Collateral securing such Indebtedness shall rank equally with the Liens on such Collateral securing the other Priority Lien Debt, Parity Lien Debt or Junior Lien Debt, as applicable, then outstanding, in each case to the extent permitted by the Secured Debt Documents. The Security Documents may be amended automatically without the consent of the Holders of Notes, the Trustee or the Collateral Trustee in connection with any amendments to corresponding security documents creating Priority Liens in accordance with the terms of the Intercreditor Agreement.

(b) Upon the request of the Company, and upon receipt by the Trustee of the documents described in Section 13.04 and Section 10.06, the Trustee shall join with the Company and each Subsidiary Guarantor in the execution of any amended or supplemental Indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to enter into such amended or supplemental Indenture that affects its own rights, duties or immunities under this Indenture or otherwise.

No amendment or supplement that imposes any obligations upon the Trustee or adversely affects the rights of the Trustee in its capacity as such will become effective without the consent of the Trustee.

Section 10.02. With Consent of Holders of Notes.

(a) Except as provided below in this Section 10.02, the Company, any Subsidiary Guarantor and the Trustee may amend or supplement the Note Documents with the consent of the Holders of at least a majority in aggregate principal amount of the Notes (including Additional Notes, if any) then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes) and, subject to any applicable exceptions listed below or in Section 7.04, any past default or compliance with any provisions may be waived with the consent of the holders of a majority in aggregate principal amount of the Notes affected thereby then outstanding, in each case in addition to any required consent of holders of other Parity Lien Obligations required with respect to any amendment or waiver under any Note Document; *provided*, *however*, that no such modification or amendment may, without the consent of the Holder of each outstanding Note:

(1) reduce the percentage in principal amount of such outstanding Notes, the consent of whose Holders is required for any such amendment or supplemental indenture, or the consent of whose Holders is required for any waiver or compliance with certain provisions of this Indenture;

(2) reduce the stated rate of or extend the stated time for payment of interest on any Note;

(3) reduce the principal of or extend the Stated Maturity of any Note;

(4) reduce any premium payable upon the redemption of any Note or change the time at which any Note may be redeemed pursuant to Section 4.07 hereof; it being expressly understood that this does not apply to modifications of Sections 5.11 and 5.15 or provisions relating thereto;

(5) make any Note payable in money other than that stated in the Notes;

(6) waive a Default or Event of Default in the payment of principal of, or interest or premium, if any, on, the Notes (except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the then outstanding Notes and a waiver of the payment default that resulted from such acceleration) or impair the right of any Holder to receive payment of the principal of, premium, if any, and interest on, such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Notes;

(7) modify the Subsidiary Guarantees in any manner adverse to the Holders of the Notes; or

(8) make any change to or modify the ranking of the Notes that would adversely affect the Holders.

In addition, the consent of Holders representing at least two-thirds of the aggregate principal amount of outstanding Notes will be required to release the Liens for the benefit of the Holders of the Notes on all or substantially all of the Collateral, other than in accordance with the Note Documents.

(b) The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Persons entitled to consent to any indenture supplemental hereto. If a record date is fixed, the Holders on such record date, or its duly designated proxies, and only such Persons, shall be entitled to consent to such supplemental indenture, whether or not such Holders remain Holders after such record date; *provided,* that unless such consent shall have become effective by virtue of the requisite percentage having been obtained prior to the date which is 90 days after such record date, any such consent previously given shall automatically and without further action by any Holder be canceled and of no further effect.

(c) Upon the request of the Company accompanied by a Board Resolution authorizing the execution of any such amended or supplemental indenture, and upon the filing with the Trustee of evidence reasonably satisfactory to the Trustee of the consent of the Holders of Notes as aforesaid, and upon receipt by the Trustee of the documents described in Section 10.06 and Section 13.04, the Trustee shall join with the Company and each Subsidiary Guarantor in the execution of such amended or supplemental indenture unless such amended or supplemental indenture directly affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such amended or supplemental indenture.

(d) It shall not be necessary for the consent of the Holders of Notes under this Section 10.02 to approve the particular form of any proposed amendment or waiver, but it shall be sufficient if such consent approves the substance thereof.

(e) After an amendment, supplement or waiver under this Section 10.02 becomes effective, the Company shall mail to the Holders of Notes affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Company to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amended or supplemental indenture or waiver.

Section 10.03. [Reserved.]

Section 10.04. Revocation and Effect of Consents.

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Note is a continuing consent by the Holder of a Note and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on any Note. However, any such Holder of a Note or subsequent Holder of a Note may revoke the consent as to its Note if the Trustee receives written

notice of revocation before the date the amendment, supplement or waiver becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

Section 10.05. Notation on or Exchange of Notes.

(a) The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Note thereafter authenticated. The Company in exchange for all Notes may issue and the Trustee shall, upon receipt of an Authentication Order, authenticate new Notes that reflect the amendment, supplement or waiver.

(b) Failure to make the appropriate notation or issue a new Note shall not affect the validity and effect of such amendment, supplement or waiver.

Section 10.06. Trustee to Sign Amendments, Etc.

The Trustee shall sign any amended or supplemental indenture or Note authorized pursuant to this Article Ten if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. In executing any amended or supplemental indenture or Note, the Trustee shall receive and (subject to Section 8.01) shall be fully protected in relying upon an Officers' Certificate and an Opinion of Counsel, each stating that such amended or supplemental indenture or Note is authorized or permitted by each applicable Parity Lien Document and that the conditions precedent to the execution and delivery of such amended or supplemental indenture or Note have been complied with.

ARTICLE ELEVEN
SUBSIDIARY GUARANTEES

Section 11.01. Subsidiary Guarantee.

(a) As of the Issue Date, the Notes will not be guaranteed by any of the Company's Subsidiaries. The following provisions of this Article Eleven shall apply to any Restricted Subsidiary that becomes a Subsidiary Guarantor after the Issue Date. Subject to this Article Eleven, each of the Subsidiary Guarantors, jointly and severally, fully and unconditionally, guarantees, on a senior secured basis, to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of the Company hereunder or thereunder, that: (i) the principal of, premium, if any, and interest on the Notes will be promptly paid in full when due, whether at Stated Maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of, premium, if any, and interest on the Notes, if any, if lawful (subject in all cases to any applicable grace period provided herein), and all other monetary Obligations of the Company to the Holders or the Trustee hereunder or thereunder will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and (ii) in case of any extension of time of payment or renewal of any Notes or any of such other Obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at Stated Maturity, by acceleration or otherwise.

Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Subsidiary Guarantors shall be jointly and severally obligated to pay the same immediately. Each Subsidiary Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

(b) The Subsidiary Guarantors agree that, to the maximum extent permitted under applicable Legal Requirements, their obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Company, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Subsidiary Guarantor. Subject to Section 7.06, each Subsidiary Guarantor waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest, notice and all demands whatsoever and covenant that this Guarantee shall not be discharged except by complete performance of the obligations contained in the Notes and this Indenture.

(c) If any Holder or the Trustee is required by any court or otherwise to return to the Company, the Subsidiary Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to either of the Company or the Subsidiary Guarantors, any amount paid by either to the Trustee or such Holder, this Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

(d) Each Subsidiary Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each Subsidiary Guarantor further agrees that, as between the Subsidiary Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article Seven for the purposes of this Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Article Seven, such obligations (whether or not due and payable) shall forthwith become due and payable by the Subsidiary Guarantors for the purpose of this Guarantee. Each Subsidiary Guarantor that makes a payment or distribution under its Guarantee shall have the right to seek contribution from any non-paying Subsidiary Guarantor, in a pro rata amount based on the net assets of each Subsidiary Guarantor determined in accordance with GAAP, so long as the exercise of such right does not impair the rights of the Holders under the Guarantee.

(e) In respect to its obligations under its Guarantee, each Subsidiary Guarantor agrees to be bound to, and hereby covenants, with respect to itself, the covenant set forth in Section 5.06.

Section 11.02. Limitation on Subsidiary Guarantor Liability.

Each Subsidiary Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Guarantee of such Subsidiary Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Subsidiary Guarantors hereby irrevocably agree that the obligations of such Subsidiary Guarantor will be limited to the maximum amount which, after giving effect to all other contingent and fixed liabilities of such Subsidiary Guarantor, and after giving effect to any collections from or payments made by or on behalf of any other Subsidiary Guarantor in respect of the obligations of such other Subsidiary Guarantor under its Guarantee or pursuant to its contribution obligations under this Article Eleven, will result in the obligations of such Subsidiary Guarantor under its Guarantee not constituting a fraudulent conveyance or fraudulent transfer under federal or state law. Until such time as the Notes are paid in full, each Subsidiary Guarantor waives all rights of subrogation or contribution, whether arising by contract or operation of law (including, without limitation, any such right arising under federal Bankruptcy Law) or otherwise by reason of any payment by it pursuant to the provisions of this Article Eleven. Each Subsidiary Guarantor that makes a payment or distribution under its Guarantee will be entitled to a contribution from each other Subsidiary Guarantor in a pro rata amount based on the net assets of each Subsidiary Guarantor determined in accordance with GAAP.

Section 11.03. Execution and Delivery of Notation of Guarantee.

(a) To evidence its Guarantee set forth in Section 11.01, a Subsidiary Guarantor shall execute a Guarantor Supplemental Indenture to this Indenture and a notation of such Guarantee substantially in the form included in Exhibit D hereto endorsed by an Officer of such Subsidiary Guarantor by manual or facsimile signature on each Note authenticated and delivered by the Trustee.

(b) Each Subsidiary Guarantor hereby agrees that its Guarantee set forth in Section 11.01 shall remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Guarantee.

(c) If an Officer whose signature is on this Indenture or on the notation of Guarantee no longer holds that office at the time the Trustee authenticates the Note on which a notation of Guarantee is endorsed, the Guarantee shall be valid nevertheless.

(d) The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Guarantee set forth in this Indenture on behalf of the Subsidiary Guarantors.

Section 11.04. Releases of Subsidiary Guarantors.

(a) A Subsidiary Guarantor will be deemed automatically and unconditionally released and discharged from all of its obligations under its Guarantee without any further action on the part of the Trustee or any Holder of the Notes:

(1) in connection with any sale or other disposition of (i) all of the Capital Stock of such Subsidiary Guarantor or (ii) all or substantially all of the properties or assets of such Subsidiary Guarantor (including by way of merger or consolidation), in each case to one or more Persons that are not (either before or after giving effect to such transaction) the Company or a Restricted Subsidiary, if the sale or other disposition, as applicable, does not violate Section 5.11;

(2) if such Subsidiary Guarantor is a Restricted Subsidiary, the Company properly designates such Subsidiary Guarantor as an Unrestricted Subsidiary or the Subsidiary no longer meets the definition of Restricted Subsidiary;

(3) if the Guarantee was required pursuant to the terms of Section 5.13, the release or discharge of the guarantee that required such Guarantee (except a release or discharge by or as a result of payment under such Guarantee);

(4) upon a satisfaction and discharge or a legal or covenant defeasance of the Notes in accordance with Article Nine or Article Twelve; or

(5) upon the liquidation or dissolution of such Subsidiary Guarantor.

(b) Any Subsidiary Guarantor not released from its obligations under its Guarantee shall remain liable for the full amount of principal of, premium, if any, and interest on the Notes and for the other obligations of any Subsidiary Guarantor under this Indenture as provided in this Article Eleven.

ARTICLE TWELVE
SATISFACTION AND DISCHARGE

Section 12.01. Satisfaction and Discharge.

This Indenture will be discharged and will cease to be of further effect (except as to surviving rights of registration of transfer or exchange of the Notes and as otherwise expressly provided for in this Indenture) as to all outstanding Notes issued under this Indenture and the Company's and the Subsidiary Guarantors' obligations under the other Note Documents with respect to the Notes will terminate when:

(a) either:

(1) all such Notes theretofore authenticated and delivered (except lost, stolen or destroyed Notes which have been replaced or paid or Notes whose payment has been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust as provided for in this Indenture) have been delivered to the Trustee for cancellation; or

(2) all Notes not theretofore delivered to the Trustee for cancellation (a) have become due and payable by reason of the giving of a notice of redemption or otherwise, (b) will become due and payable at their Stated Maturity within one year, or (c) are to be called for

redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company;

(b) the Company or any Subsidiary Guarantor has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust cash in United States dollars, Government Obligations, or a combination thereof, sufficient to pay and discharge the entire Indebtedness on the Notes not theretofore delivered to the Trustee for cancellation, including principal of, premium, if any, and accrued interest at such maturity, Stated Maturity or redemption date;

(c) the Company or any Subsidiary Guarantor has paid or caused to be paid all other sums due and payable under this Indenture by the Company and any Subsidiary Guarantor;

(d) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent under this Indenture relating to the satisfaction and discharge of this Indenture have been complied with; and

(e) the Company has delivered irrevocable instructions to the Trustee hereunder to apply any deposited money described in clause (b) of this Section 12.01 to the payment of the Notes at Stated Maturity or the redemption date, as the case may be.

Section 12.02. Deposited Money and Government Obligations to Be Held in Trust; Other Miscellaneous Provisions.

(a) Subject to Section 12.03, all money and non-callable Government Obligations (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 12.02, the "Trustee") pursuant to Section 12.01 in respect of the outstanding Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium, if any, and interest, but such money need not be segregated from other funds except to the extent required by law.

(b) Notwithstanding the above, the Trustee shall pay to the Company from time to time upon its request any cash or Government Obligations held by it as provided in this Section 12.02 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification delivered to the Trustee, are in excess of the amount thereof that would then be required to be deposited to effect a satisfaction and discharge under this Article Twelve.

Section 12.03. Repayment to the Company.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of, premium, if any, or interest on, any Note and remaining unclaimed for two years after such principal premium, if any, or interest has become due and payable shall be paid to the Company on its request or (if then held by the

Company) shall be discharged from such trust; and the Holder of such Notes shall thereafter look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, shall at the expense of the Company cause to be published once in *The New York Times* or *The Wall Street Journal* (national edition) or send to each Holder entitled to such money, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining shall be repaid to the Company.

ARTICLE THIRTEEN
MISCELLANEOUS

Section 13.01. No Adverse Interpretation of Other Agreements.

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or any of its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 13.02 Notices.

(a) Any notice or communication by either of the Company or any Subsidiary Guarantor, on the one hand, or the Trustee on the other hand, to the other is duly given if in writing in the English language and delivered in Person or mailed by first class mail (registered or certified, return receipt requested), facsimile, electronic transmission or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Company or any Subsidiary Guarantor:

SM Energy Company
1775 Sherman Street, Suite 1200
Denver, Colorado 80203
Facsimile: (303) 861-8140
Attention: Chief Financial Officer

If to the Trustee:

UMB Bank, N.A.
5555 San Felipe Street, Suite 870
Houston, Texas 77056
Telephone: (713) 300-0586
Facsimile: (214) 389-5949
Email: Shazia.Flores@umb.com
Attention: Shazia Flores

(b) The Company, the Subsidiary Guarantors or the Trustee, by notice to the others may designate additional or different addresses for subsequent notices or communications.

(c) All notices and communications (other than those sent to Holders) shall be deemed to have been duly given: (i) at the time delivered by hand, if personally delivered; (ii) five Business Days after being deposited in the mail, postage prepaid, if mailed; (iii) when receipt acknowledged, if sent by facsimile or electronic transmission; (iv) and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

(d) Any notice or communication to a Holder (i) of a Global Note shall be given in accordance with the rules and procedures of the Depositary, and (ii) otherwise shall be mailed by first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery to its address shown on the register kept by the Registrar. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

(e) If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

(f) If the Company mails a notice or communication to Holders, it shall mail a copy to the Trustee and each Agent at the same time.

Section 13.03. [Reserved].

Section 13.04. Certificate and Opinion as to Conditions Precedent.

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee: (1) an Officers' Certificate (which shall include the statements set forth in Section 13.05) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and (2) an Opinion of Counsel (which shall include the statements set forth in Section 13.05) stating that, in the opinion of such counsel (who may rely on such Officers' Certificate as to matters of fact), all such conditions precedent and covenants have been satisfied.

Section 13.05. Statements Required in Certificate or Opinion.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(1) a statement that the person making such certificate or opinion has read such covenant or condition;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been satisfied; and

(4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been satisfied.

Section 13.06. Rules by Trustee and Agents.

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

Section 13.07. No Personal Liability of Directors, Officers, Employees and Stockholders.

No director, officer, employee, manager, incorporator, member, partner or stockholder or other owner of Capital Stock of the Company or any Restricted Subsidiary, as such, will have any liability for any obligations of the Company, any Subsidiary Guarantor or any other Restricted Subsidiary under the Notes, this Indenture or the Guarantees to which they are a party, or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

Section 13.08. Governing Law.

THIS INDENTURE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 13.09. [Reserved.]

Section 13.10. Successors.

All agreements of the Company in this Indenture and the Notes shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors. All agreements of each Subsidiary Guarantor in this Indenture shall bind its successors, except as otherwise provided in Section 6.01 or 11.04.

Section 13.11. Severability.

In case any provision in this Indenture or the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 13.12. Counterpart Originals.

The parties may sign any number of copies of this Indenture, and each party hereto may sign any number of separate copies of this Indenture. Each signed copy shall be an original, but

all of them together represent the same agreement. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 13.13. Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by the Holders of Notes may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by agents duly appointed in writing, and may be given or obtained in connection with a purchase of, or tender offer or exchange offer for, outstanding Notes; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company if made in the manner provided in this Section 13.13.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to such witness, notary or officer the execution thereof. Where such execution is by a signer acting in a capacity other than his or her individual capacity, such certificate or affidavit shall also constitute sufficient proof of authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

(c) Notwithstanding anything to the contrary contained in this Section 13.13, the principal amount and serial numbers of Notes held by any Holder, and the date of holding the same, shall be proved by the register of the Notes maintained by the Registrar as provided in Section 3.04.

(d) If the Company shall solicit from the Holders of the Notes any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may, at its option, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Company shall have no obligation to do so. Such record date shall be a date not earlier than the date 30 days prior to the first solicitation of Holders generally in connection therewith or the date of the most recent list of Holders forwarded to the Trustee prior to such solicitation pursuant to Section 3.06 and not later than the date such solicitation is completed. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be

deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of the then outstanding Notes have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the then outstanding Notes shall be computed as of such record date; provided that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than eleven months after the record date.

(e) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Note shall bind every future Holder of the same Note and the Holder of every Note issued upon the registration or transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Note.

(f) Without limiting the foregoing, a Holder entitled hereunder to take any action hereunder with regard to any particular Note may do so itself with regard to all or any part of the principal amount of such Note or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such principal amount.

(g) For purposes of this Indenture, any action by the Holders which may be taken in writing may be taken by electronic means or as otherwise reasonably acceptable to the Trustee.

Section 13.14. Benefit of Indenture.

Nothing in this Indenture or in the Notes, express or implied, shall give to any Person, other than the parties hereto, any Paying Agent, any Registrar and its successors hereunder, and the Holders, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 13.15. Table of Contents, Headings, Etc.

The Table of Contents, Cross-Reference Table and Headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

ARTICLE FOURTEEN
COLLATERAL AND SECURITY

Section 14.01. Security Interest.

(a) The due and punctual payment of the obligations on the Notes and the obligations under the Guarantees, when and as the same shall be due and payable, whether on an Interest Payment Date, at maturity, by acceleration, repurchase, redemption or otherwise, and interest on the overdue principal of, premium, if any, and interest, if any (to the extent permitted by law), on the Notes, the related Guarantees and performance of all other obligations of the Company and the Subsidiary Guarantors to the Holders of Notes or the Trustee under the Note Documents,

according to the terms hereunder or thereunder (collectively, the "Notes Obligations"), are secured, as provided in the Security Documents. The Company and each of the Subsidiary Guarantors consent and agree to be bound by the terms of the Security Documents to which they are parties, as the same may be in effect from time to time, and agree to perform their obligations thereunder in accordance therewith. The Company and the Subsidiary Guarantors hereby agree that the Collateral Trustee shall hold the Collateral (directly or through co-trustees or agents) on behalf of and for the benefit of all of the Holders of Notes and the other holders of Parity Lien Obligations.

(b) Each Holder of Notes, by its acceptance thereof and of the Guarantees, consents and agrees to the terms of the Intercreditor Agreement and the Security Documents (including, without limitation, the provisions providing for foreclosure and release of Collateral and amendments to the Security Documents) as the same may be in effect or may be amended from time to time in accordance with their terms, and authorizes and appoints UMB Bank, N.A. as the Trustee and as the Collateral Trustee. The Trustee hereby authorizes and appoints UMB Bank, N.A. as Collateral Trustee and each Holder of Notes and the Trustee direct the Collateral Trustee to enter into the Security Documents (including any amendments thereto contemplated by Section 7.1 of the Collateral Trust Agreement and any security documents to secure Additional Parity Lien Debt in accordance with Section 3.8 of the Collateral Trust Agreement) and to perform its obligations and exercise its rights thereunder in accordance therewith, subject to the terms and conditions thereof, including, without limitation, the limitations on duties of the Collateral Trustee provided in Section 5.1 and Section 5.12 of the Collateral Trust Agreement. The Trustee, the Collateral Trustee and each Holder of Notes, by accepting the Notes and the Guarantees, acknowledges that (i) as more fully set forth in the Security Documents, the Collateral as now or hereafter constituted shall be held for the benefit of all the holders of Parity Lien Obligations, subject to the Intercreditor Agreement and (ii) Liens granted or purported to be granted on any of the Collateral pursuant to the Security Documents are subject to and qualified and limited in all respects by the Intercreditor Agreement and the Security Documents, and actions that may be taken thereunder.

Section 14.02. Post-Issue Date Collateral Requirements.

(a) Within 90 days after the Issue Date, the Company shall (and within 90 days after any Subsidiary becomes a Subsidiary Guarantor, shall cause such Subsidiary Guarantor to), (i) execute and deliver to the Collateral Trustee, as mortgagee or beneficiary, as applicable, such Mortgages or other Security Documents, and any amendments or supplements related thereto, together with satisfactory evidence of the completion (or satisfactory arrangements for the completion) of all recordings and filings of such Mortgages or other Security Documents in the proper recorders' offices or appropriate public records (and payment of any taxes or fees in connection therewith) as may be necessary to create a valid, perfected second-priority Lien (subject to the Intercreditor Agreement and to Permitted Liens), against the Oil and Gas Properties or other property or assets of the Company that are subject to Liens securing the Priority Lien Obligations on the Issue Date (or, with respect to any Subsidiary Guarantor, the Oil and Gas Properties or other property or assets of such Subsidiary Guarantor that are subject to Liens securing the Priority Lien Obligations on the date that such Subsidiary becomes a

Subsidiary Guarantor), (ii) on the date that each such Mortgage is so filed or recorded, execute and deliver to the Collateral Trustee an Officers' Certificate and cause its counsel for the jurisdiction in which the relevant Oil and Gas Properties are located to execute and deliver to the Collateral Trustee an Opinion of Counsel, each confirming the completion thereof in form and substance reasonably satisfactory to the Collateral Trustee and (iii) no later than one (1) Business Day immediately following the date upon which such Liens are perfected, file a current report on Form 8-K disclosing the date on which the Liens against such Oil and Gas Properties or such other property or assets of the Company and any Subsidiary Guarantors were perfected. In addition, the Security Documents will not require that security interests be perfected if such security interests cannot be perfected by the filing of UCC financing statements, the recording of mortgages or deeds of trust, the taking possession of applicable property and other assets (including by way of a gratuitous bailee for purposes of perfection), or the execution of account control agreements with respect to certain deposit accounts, securities accounts and commodities accounts.

(b) Any Security Documents entered into after the Issue Date shall be substantially in the form of the corresponding security document securing the Priority Liens Obligations, or to the extent there is no such corresponding security document, the corresponding security documents securing the Priority Lien Obligations in place on the Issue Date (other than with respect to the priority nature of such Liens), in each case, with such changes or other modifications that are reasonably necessary to reflect the terms of the Intercreditor Agreement and the Collateral Trust Agreement and with such deletions or modifications of representations, warranties and covenants as are customary with respect to security documents establishing second-priority Liens securing debt securities sold in similar private transactions that are not subject to registration requirements of the Securities Act.

Section 14.03. Further Assurances; Liens on Additional Property.

(a) The Company and each of the Subsidiary Guarantors shall do or cause to be done all acts and things that may be required, or that the Collateral Trustee (acting at the direction of the Parity Lien Representative) from time to time may reasonably request, to assure and confirm that the Collateral Trustee holds, for the benefit of the holders of Parity Lien Obligations, valid and enforceable perfected second-priority Liens (subject to the Intercreditor Agreement and to Permitted Liens) upon the Collateral (including any Property (i) acquired after the Issue Date that is required by any Parity Lien Document to become Collateral, or (ii) that exists on the Issue Date that becomes required by any Parity Lien Document to become Collateral after the Issue Date), in each case, as contemplated by, and with the Lien priority required under, the Parity Lien Documents, and in connection with any merger, consolidation or sale of assets of the Company or any Subsidiary Guarantor, the Property and assets of the Person which is consolidated or merged with or into the Company or any Subsidiary Guarantor, to the extent that they are Property or assets of the types which would constitute Collateral under the Security Documents, shall be treated as after-acquired Property and the Company or such Subsidiary Guarantor shall take such action requested by the Collateral Trustee as may be reasonably necessary to cause such Property and assets to be made subject to the Parity Liens, in the manner and to the extent required under the Security Documents; *provided, however,* that if any Priority

Lien Obligations are outstanding at such time, such after-acquired Property shall only be required to become part of the Collateral, if and to the extent that such after-acquired Property becomes part of the collateral securing the Priority Lien Obligations substantially concurrently therewith (unless the Priority Lien Secured Parties are unable to take, or decline to accept, a Lien on such after-acquired Property).

(b) Upon the reasonable request of the Collateral Trustee or any Parity Lien Representative at any time and from time to time, the Company and each of the Subsidiary Guarantors shall promptly execute, acknowledge and deliver such Security Documents, instruments, certificates, financing statements, notices and other documents, and take such other actions as shall be reasonably required, or that the Collateral Trustee (acting at the direction of the Parity Lien Representative) may reasonably request, to create, perfect, protect, assure or enforce the Liens and benefits intended to be conferred, in each case as contemplated by the Parity Lien Documents for the benefit of the holders of Parity Lien Obligations; *provided*, that no such Security Document, instrument or other document shall be materially more burdensome upon the Company and the Subsidiary Guarantors than the Parity Lien Documents executed and delivered (or required to be executed and delivered after the date of this Indenture, including pursuant to Section 14.02) by the Company and the Subsidiary Guarantors in connection with the issuance of the Notes; *provided, further,* that if any Priority Lien Obligations are outstanding at such time, the execution, acknowledgement and delivery of such Security Documents, instruments, certificates, notices and other documents shall be required, and such actions shall be required to be taken, in each case, only if and to the extent that the same are executed, acknowledged and delivered, or such actions taken, with respect to the Priority Lien Obligations substantially concurrently therewith (it being understood that the Collateral Trustee shall have no liability whatsoever to determine whether such a document is materially burdensome and shall have no liability whatsoever with respect to this determination) (unless the Priority Lien Secured Parties are unable to take, or decline to accept, a Lien on such after-acquired Property).

(c) From and after the Issue Date, if the Company or any Subsidiary Guarantor acquires any Property that constitutes collateral for the Priority Lien Debt or Junior Lien Debt, if and to the extent that any Priority Lien Document or Junior Lien Document, as applicable, requires any supplemental security document for such collateral or other actions to achieve a perfected Lien on such collateral, the Company shall, or shall cause the applicable Subsidiary Guarantor to, promptly (but in any event no later than the date that is 20 Business Days after such supplemental security documents are executed and delivered (or other action taken) under such Priority Lien Documents or Junior Lien Documents, as applicable), to the extent permitted by applicable Legal Requirements, execute and deliver to the Collateral Trustee appropriate Security Documents (or amendments thereto) in such form as shall be necessary to grant the Collateral Trustee a perfected second-priority Lien (subject to the Intercreditor Agreement and to Permitted Liens) on such Collateral or take such other actions in favor of the Collateral Trustee as shall be reasonably necessary to grant a perfected second-priority Lien (subject to the Intercreditor Agreement and to Permitted Liens) on such Collateral to the Collateral Trustee, for the benefit of the Holders of the Notes and holders of any other Parity Lien Obligations, subject to the terms of this Indenture, the Intercreditor Agreement and the other Note Documents. Additionally, subject to this Indenture, the Intercreditor Agreement and the other Note

Documents, if the Company or any Subsidiary Guarantor creates any additional Lien upon any Property that would constitute Collateral, or takes any additional actions to perfect any existing Lien on Collateral, in each case for the benefit of the holders of the Priority Lien Debt or the holders of Junior Lien Debt, after the Issue Date, the Company or such Subsidiary Guarantor, as applicable, shall, to the extent permitted by applicable Legal Requirements, within 20 Business Days after such Lien is granted or other action taken, grant a perfected second-priority Lien (subject to the Intercreditor Agreement and to Permitted Liens) upon such property or asset, or take such additional perfection actions, as applicable, for the benefit of the Holders and holders of any other Parity Lien Obligations, and obtain all related deliverables as those delivered to the Priority Lien Agent or Junior Lien Collateral Trustee, as applicable, in each case as security for the Notes Obligations and the Obligations with respect to any other Parity Lien Debt. Notwithstanding the foregoing, to the extent that any Lien on any Collateral is perfected by the possession or control of such Collateral or of any account in which such Collateral is held, and if such Collateral or any such account is in fact in the possession or under the control of the Priority Lien Agent, or of agents or bailees of the Priority Lien Agent, the perfection actions and related deliverables described in this Section 14.03(c) shall not be required.

(d) The Company will deliver to the Trustee copies of all documents delivered to the Collateral Trustee pursuant to the Security Documents.

(e) Notwithstanding anything herein or in the Note Documents to the contrary (i) neither the Company nor any Subsidiary Guarantor will be required to grant a security interest in, and the Collateral shall not include, any collateral securing Priority Lien Obligations that is not subject to a Priority Lien generally in favor of all Priority Lien Secured Parties, including, without limitation, as may be provided only to certain issuers of letters of credit pursuant to the Priority Lien Documents rather than generally to the Priority Lien Secured Parties or to the Priority Lien Agent for the benefit of the Priority Lien Secured Parties as a whole, (ii) the creation or perfection of Liens on, pledges of or security interests in particular Property or assets will not be required in respect of the Notes Obligations or obligations in respect of other Parity Lien Debt, if, and for so long as, the creation or perfection of such security interests is not required pursuant to the Priority Lien Documents, (iii) so long as the Discharge of Priority Lien Obligations has not occurred, the Company and the Subsidiary Guarantors shall not be required to deliver any Pledged or Controlled Collateral to the Collateral Trustee (including, without limitation, execution or delivery of any account control agreement with respect to any deposit accounts, securities accounts and commodities accounts that constitute Pledged or Controlled Collateral) so long as the Priority Lien Agent serves as a gratuitous bailee for purposes of perfection in respect of all applicable security interests and Liens granted pursuant to any Security Document, (iv) nothing in this Section 14.03 shall require the Company or any Subsidiary Guarantor to execute, deliver, record or file any documents or other agreement, or to do or cause to be done any acts or things that are, in each case, described in Section 14.02(a), prior to the time period set forth therefor in Section 14.02(a) and (v) the Company and the Subsidiary Guarantors shall not be required to take any action to perfect the Liens and other security interests granted pursuant to the Security Documents to the extent such Liens and security interests cannot be perfected by the filing of UCC financing statements, the recording of mortgages or deeds of trust, the taking possession of applicable Property and other assets

(including by way of a gratuitous bailee for purposes of perfection), or the execution of account control agreements with respect to certain deposit accounts, securities accounts and commodities accounts (to the extent the Priority Lien Agent is not serving as gratuitous bailee in favor of the Collateral Trustee with respect to such accounts), or the execution and/or filing of any other agreement, document or instrument that is executed and/or filed in respect of the assets and other Property constituting Collateral securing the Notes Obligations.

Section 14.04. [Reserved].

Section 14.05. Collateral Trust Agreement.

This Indenture and the provisions of each other Security Document are subject to the terms, conditions and benefits set forth in the Collateral Trust Agreement. The Company and each Subsidiary Guarantor consents to, and agrees to be bound by, the terms of the Collateral Trust Agreement, as the same may be in effect from time to time, and to perform its obligations thereunder in accordance with the terms therewith. Each Holder of Notes, by its acceptance of the Notes (a) agrees that it will be bound by, and will take no actions contrary to, the provisions of the Collateral Trust Agreement and (b) authorizes and instructs the Collateral Trustee on behalf of the Holders of the Notes and each other holder of Parity Lien Obligations to enter into the Collateral Trust Agreement as Collateral Trustee on behalf of such holders of Parity Lien Obligations. In addition, each Holder of Notes authorizes and instructs the Collateral Trustee to enter into any amendments or joinders to the Collateral Trust Agreement, without the consent of any Holder or the Trustee, to add additional Indebtedness as Additional Parity Lien Debt and add other parties (or any authorized agent or trustee therefor) holding such Indebtedness thereto and to establish that the Lien on any Collateral securing such Indebtedness ranks equally with the Liens on such Collateral securing the other Parity Lien Debt then outstanding.

Section 14.06. Release of Liens in Respect of Notes.

The Collateral Trustee's other Liens upon the Collateral will no longer secure the Notes outstanding under this Indenture or any other Notes Obligations with respect to the Notes, and the right of the Holders of the Notes to the benefits and proceeds of the Collateral Trustee's Liens on the Collateral will terminate and be discharged:

(1) upon satisfaction and discharge of this Indenture in accordance with Article Twelve hereof;

(2) upon a Legal Defeasance or Covenant Defeasance of the Notes in accordance with Article Nine hereof;

(3) upon payment in full in cash and discharge of all Notes outstanding under this Indenture and all other Notes Obligations with respect to the Notes that are outstanding, due and payable under this Indenture and the other Note Documents at the time the Notes are paid in full in cash and discharged (other than contingent indemnity and reimbursement obligations for which no claim has been made);

(4) as to any Collateral of the Company or a Subsidiary Guarantor that is sold, transferred or otherwise disposed of by the Company or any Subsidiary Guarantor to a Person that is not (either before or after such sale, transfer or disposition) the Company or a Subsidiary Guarantor in a transaction or other circumstance that complies with Section 5.11 (other than any obligations to apply proceeds of such sale, transfer or disposition as provided in such Section) and is permitted by all of the other Note Documents, at the time of such sale, transfer or other disposition or to the extent of the interest sold, transferred or otherwise disposed of; provided that the Collateral Trustee's Liens upon the Collateral will not be released if the sale or disposition is subject to Section 6.01;

(5) in whole or in part, with the consent of the Holders of the requisite percentage of Notes in accordance with Article Ten hereof;

(6) with respect to the assets of any Subsidiary Guarantor, at the time that such Subsidiary Guarantor is released from its Guarantee in accordance with Section 11.04;

(7) if and to the extent required by the Collateral Trust Agreement or clause (a) of Section 4.01 of the Intercreditor Agreement;

(8) if and to the extent any Collateral becomes an Excluded Asset; or

(9) as ordered pursuant to applicable Legal Requirements under a final and nonappealable order or judgment of a court of competent jurisdiction.

In each such case, upon request of the Company, the Collateral Trustee will promptly execute (with such acknowledgements and/or notarizations as are required, or are otherwise reasonably requested by the Company) and deliver evidence of such release to the Company; provided, however, to the extent the Company requests the Collateral Trustee to take any action to acknowledge or deliver evidence of the release of Collateral in accordance with this Section 14.06, the Company will deliver to the Collateral Trustee an Officers' Certificate and an Opinion of Counsel, each to the effect that such release of Collateral pursuant to the provisions described in this Section 14.06 does not violate the terms of each applicable Parity Lien Document and that all conditions precedent relating to such release provided for in each applicable Parity Lien Document have been complied with. In determining whether any release of Collateral is permitted, the Collateral Trustee is entitled to conclusively rely on such Officers' Certificate and Opinion of Counsel furnished to it pursuant to the immediately preceding sentence. All actions taken pursuant to the provisions described in this Section 14.06 are at the sole cost and expense of the Company and the applicable Subsidiary Guarantor.

Section 14.07. Collateral Trustee.

(a) The Collateral Trustee will hold (directly or through co-trustees or agents) and, subject to the terms of the Intercreditor Agreement and the Collateral Trust Agreement, will be entitled to enforce all Liens on, the Collateral created by the Security Documents. The Parity Lien Representative will be the party designated as the Parity Lien Representative in respect of any Series of Parity Lien Debt designated in accordance with the Collateral Trust Agreement.

(b) Except as provided in the Collateral Trust Agreement or as directed by an Act of Parity Lien Debtholders in accordance with the Collateral Trust Agreement, the Collateral Trustee will not be obligated:

(1) to act upon directions purported to be delivered to it by any Person;

(2) to take any Enforcement Action (as defined in the Collateral Trust Agreement); or

(3) to take any other action whatsoever with regard to any or all of the Security Documents, the Liens created thereby or the Collateral.

Section 14.08. Insurance.

(a) The Company and the Subsidiary Guarantors shall maintain insurance at all times by financially sound and reputable insurers, to such extent and against such risks as is customary with companies in the same or similar businesses operating in the same or similar locations.

(b) Upon the reasonable request of the Collateral Trustee, the Company and the Subsidiary Guarantors will furnish to the Collateral Trustee information as to their property and liability insurance carriers.

(c) Within 60 days after the Issue Date (or such later date as agreed by the Collateral Trustee), the Company will use its reasonable efforts to cause the loss payable clauses or provisions in the insurance policies of the Company and the Subsidiary Guarantors insuring any of the Collateral to be endorsed in favor of and made payable to the Collateral Trustee as its interests may appear and such policies shall name the Collateral Trustee as an "additional insured" and/or "lender loss payee," as applicable.

Section 14.09. Additional Obligations of the Company.

With respect to any change in the Company's or any Subsidiary Guarantor's (a) legal name, (b) jurisdiction of organization or formation, (c) type of legal entity or (d) Organizational Identification Number, the Company or such Subsidiary Guarantor shall (x) promptly (and in any event, within thirty (30) days after the occurrence thereof) notify the Collateral Trustee in writing of such change, and (y) upon the reasonable request of the Collateral Trustee, take all necessary actions under the Uniform Commercial Code and any other applicable laws that are required to maintain the perfection and priority of the Collateral Trustee's Lien in the Collateral created by the Security Documents. The Company shall also promptly notify the Collateral Trustee in writing if any material portion of the Collateral is damaged, destroyed or condemned.

Section 14.10. No Obligation.

The Trustee and the Collateral Trustee will have no obligation to maintain or monitor the perfection of Liens.

[*Signature pages follow*]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be executed by their duly authorized representatives, effective as of the day and year first above written.

SM ENERGY COMPANY

By: /s/ David W. Copeland
Name: David W. Copeland
Title: Executive Vice President, General Counsel and Corporate Secretary

UMB BANK, N.A., as Trustee

By: /s/ Shazia Flores
Name: Shazia Flores
Title: Vice President

EXHIBIT A

[Face of Note]

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) TO THE COMPANY OR ITS AGENT FOR REGISTRATION OR TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR TO SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY OR SUCH OTHER REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN. TRANSFERS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF CEDE & CO. OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE.

THIS NOTE (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THIS NOTE MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS NOTE IS HEREBY NOTIFIED THAT THE SELLER OF THIS NOTE MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. THE HOLDER OF THIS NOTE AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) THIS NOTE MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (I) IN THE UNITED STATES TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (II) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 904 UNDER THE SECURITIES ACT, (III) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE) OR (IV) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (I) THROUGH (V) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS NOTE FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE. WITH RESPECT TO A TRANSFER DESCRIBED IN CLAUSE (II) ABOVE, THE HOLDER OF THIS NOTE ACKNOWLEDGES THAT THE COMPANY OR THE TRUSTEE MAY

REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO THE COMPANY OR THE TRUSTEE.

[THIS NOTE (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION ORIGINALLY NOT SUBJECT TO REGISTRATION UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE " SECURITIES ACT"), AND MAY NOT BE TRANSFERRED IN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, ANY U.S. PERSON IN THE ABSENCE OF SUCH REGISTRATION EXCEPT PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND ALL APPLICABLE STATE SECURITIES LAWS. TERMS USED ABOVE HAVE THE MEANINGS GIVEN TO THEM IN REGULATION S UNDER THE SECURITIES ACT.][1]

[1] Regulation S Legend, if applicable.

CUSIP: [●][2]
ISIN: [●][3]

No. _____ Principal Amount: $ _____

SM ENERGY COMPANY

10.00% Senior Secured Notes due 2025

SM Energy Company, a Delaware corporation (the "Company"), which term includes any successor under the Indenture hereinafter referred to, for value received, promises to pay to _____, or its registered assigns, the principal sum of [ ] ($[ ]) UNITED STATES DOLLARS on January 15, 2025.

Interest Payment Dates: January 15 and July 15 of each year, commencing July 15, 2020.

Regular Record Dates: January 1 and July 1 of each year.

Reference is hereby made to the further provisions of this Note set forth on the reverse, which further provisions shall for all purposes have the same effect as if set forth at this place.

IN WITNESS WHEREOF, the Company has caused this Note to be signed manually or by facsimile by its duly authorized officers.

SM ENERGY COMPANY,
a Delaware corporation

By: ___
Name:
Title:

[2] Rule 144A CUSIP: 78454L AT7
Regulation S Note CUSIP: U83067 AH8

[3] Rule 144A ISIN: US78454LAT70
Regulation S Note ISIN: USU83067AH83

(Form of Trustee's Certificate of Authentication)

This is one of the 10.00% Senior Secured Notes due 2025 described in the within-mentioned Indenture.

UMB Bank, N.A., as Trustee

By: _____
Authorized Signatory

Date: _____

[Reverse Side of Note]

SM ENERGY COMPANY

10.00% Senior Secured Notes due 2025
(the "Notes")

Capitalized terms used herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. Interest. The Company promises to pay interest on the principal amount of this Note at 10.00% per annum until maturity. The Company shall pay interest on this Note semi-annually in arrears on January 15 and July 15 of each year (each, an "Interest Payment Date"). Interest on the Notes shall accrue from the most recent date to which interest has been paid on the Notes (or one or more Predecessor Notes) or, if no interest has been paid, from and including the date of original issuance of the Notes; *provided,* that if there is no existing Default in the payment of interest, and if this Note is authenticated between a record date referred to on the face hereof and the next succeeding Interest Payment Date, interest shall accrue from such next succeeding Interest Payment Date; *provided further* that the first Interest Payment Date shall be July 15, 2020.[4] The Company shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal from time to time on demand at the rate then in effect on the Notes to the extent lawful; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace periods) from time to time on demand at the same rate to the extent lawful. Interest shall be computed on the basis of a 360-day year of twelve 30-day months. If any payment date with respect to the Notes is not a Business Day, payment may be made on the next succeeding day that is a Business Day, and no interest shall accrue on such payment for the intervening period.

2. Method of Payment. The Company shall pay interest on the Notes (except defaulted interest, if any) to the Persons in whose name this Note (or one or more Predecessor Notes) is registered at the close of business on January 1 and July 1 immediately preceding the applicable Interest Payment Date, even if such Notes are canceled after such record date and on or before such Interest Payment Date, except as provided in Section 3.13 of the Indenture with respect to defaulted interest. The Notes shall be payable as to principal, premium, if any, and interest at the office or agency of the Company maintained for such purpose, or, at the option of the Company, payment of interest may be made by check mailed to the Holders at their addresses set forth in the register of Holders, and *provided,* that payment by wire transfer of immediately available funds shall be required with respect to principal of, premium, if any, and interest on, all Global Notes and all other Notes to the Holders who have provided wire transfer instructions to the Company or the Paying Agent. Such payment shall be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

[4] For Additional Notes, insert the appropriate Interest Payment Date for those Additional Notes

3. Paying Agent and Registrar. Initially, UMB Bank, N.A., the Trustee under the Indenture, shall act as Paying Agent and Registrar. The Company may change any Paying Agent or Registrar without notice to any Holder. The Company or any of its Subsidiaries may act in any such capacity.

4. Indenture. The Company issued the Notes under an Indenture dated as of June 17, 2020 (the "Indenture") by and between the Company and the Trustee. The terms of the Notes include those stated in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture for a statement of such terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture with respect to the Notes, the provisions of the Indenture shall govern and be controlling. The Notes will be secured by second-priority Liens (subject to the Intercreditor Agreement and Permitted Liens) on the Collateral pursuant to the Security Documents, including the Collateral Trust Agreement and the Intercreditor Agreement. The rights of the Holders of the Notes with respect to the Collateral will be subject to the terms of the Intercreditor Agreement and the Collateral Trust Agreement. The Indenture provides that an unlimited amount of Additional Notes may be issued thereunder, subject to compliance with the covenants therein.

5. Optional Redemption. The Notes shall be redeemable at the option of the Company as provided in Article Four of the Indenture.

6. Mandatory Redemption. The Company shall not be required to make mandatory redemption or sinking fund payments with respect to the Notes.

7. Repurchase at Option of Holders/Application of Proceeds of Asset Dispositions.

(a) Upon the occurrence of a Change of Control Triggering Event with respect to the Notes, each Holder may require the Company to purchase such Holder's Notes in whole or in part in amounts of $2,000 or whole multiples of $1,000 in excess thereof, at a purchase price in cash in an amount equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, to, but excluding, the date of purchase (subject to the rights of Holders of record on relevant record dates to receive interest due on an Interest Payment Date), pursuant to a Change of Control Offer in accordance with the procedures set forth in the Indenture.

(b) Under certain circumstances described in the Indenture, the Company will be required to apply the proceeds of Asset Dispositions to the repayment of the Notes and/or Parity Lien Debt.

8. Selection and Notice of Redemption. If fewer than all of the Notes are to be redeemed in an offer to purchase at any time, the Trustee shall select the Notes to be redeemed among the Holders of the Notes in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed or, if the Notes are not so listed, on a pro rata basis, by lot or in accordance with any other method the Trustee deems fair and reasonable (subject to the procedures of DTC or any other Depositary).

9. Denominations, Transfer, Exchange. The Notes are in registered form without coupons in denominations of $2,000 and whole multiples of $1,000 in excess thereof. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Company may require a Holder to pay any taxes or other governmental charges required by law or permitted by the Indenture. The Company is not required to transfer or exchange any Note selected for redemption. Also, the Company is not required to transfer or exchange any Note for a period of 15 days before a selection of Notes to be redeemed.

10. Persons Deemed Owners. The registered Holder of a Note will be treated as its owner for all purposes.

11. Amendment, Supplement and Waiver. The Indenture or the Notes may be amended or supplemented only as provided in the Indenture.

12. Defaults. In the case of an Event of Default arising from certain events of bankruptcy, insolvency or reorganization specified in the Indenture, all outstanding Notes will become due and payable immediately without further action or notice. If any other Event of Default occurs and is continuing, the Trustee or the Holders of not less than 25% in principal amount of the then outstanding Notes may, and the Trustee at the request of such Holders shall, declare all unpaid principal of, premium, if any, and accrued interest on, all Notes to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by the Holders of the Notes) and upon any such declaration, such principal premium, if any, and interest shall become due and payable immediately. The Trustee may withhold from Holders of the Notes notice of any continuing Default or Event of Default (except a Default or Event of Default relating to the payment of principal or interest) if it determines that withholding notice is in their interest. The Holders of not less than a majority in aggregate principal amount of the Notes outstanding by notice to the Trustee may on behalf of the Holders of all outstanding Notes waive any existing Default or Event of Default and its consequences under the Indenture except a continuing Default of Event of Default (1) in the payment of the principal of, premium, if any, or interest on, any Note (which may only be waived with the consent of each Holder of Notes affected) or (2) in respect of a covenant or provision which under the Indenture cannot be modified or amended without the consent of the Holder of each Note affected by such modification or amendment.

13. Trustee Dealings with the Company. The Trustee, in its individual or any other capacity, may make loans to, accept deposits from, and perform services for the Company or its Affiliates, and may otherwise deal with the Company or its Affiliates, as if it were not the Trustee.

14. No Recourse Against Others. No director, officer, employee, manager, incorporator, member, partner or stockholder or other owner of Capital Stock of the Company, Subsidiary Guarantors or any Restricted Subsidiary, as such, will have any liability for any obligations of the Company or the Restricted Subsidiaries under the Notes, the Indenture or the Guarantees to which they are a party, or for any claim based on, in respect of, or by reason of, such obligations

or their creation. Each Holder of Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

15. Authentication. This Note shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent.

16. CUSIP Numbers. Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP numbers to be printed on the Notes and the Trustee may use CUSIP numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be place only on the other identification number placed thereon.

17. Governing Law. This Note shall be governed by, and construed in accordance with, the laws of the State of New York.

The Company shall furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to:

SM Energy Company
1775 Sherman Street, Suite 1200
Denver, Colorado 80203
Facsimile: (303) 861-0934
Attention: Chief Financial Officer

ASSIGNMENT FORM

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to: _____

_____

(Insert assignee's legal name)

_____

(Insert assignee's soc. sec. or tax I.D. no.)

_____

_____

_____

(Print or type assignee's name, address and zip code)

and irrevocably appoint _____ to transfer this Note on the books of the Company. The agent may substitute another to act for him.

Date: _____

Signature: _____

(Sign exactly as your name appears on the face of this Note)

Signature Guarantee*:

_____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Company pursuant to Section 5.11 or Section 5.15 of the Indenture, check the appropriate box below:

[ ] Section 5.11 [ ] Section 5.15

If you want to elect to have only part of the Note purchased by the Company pursuant to Section 5.11 or Section 5.15 of the Indenture, state the amount you elect to have purchased:

$ ___

Date: _____

Your Signature: _____
(Sign exactly as your name appears on the face of this Note)

Tax Identification No.: _____

Signature Guarantee*: _____

_____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE

The following exchanges of a part of this Global Note for an interest in another Global Note or for a Definitive Note, or exchanges of a part of another Global Note or Definitive Note for an interest in this Global Note, have been made:

Date of Exchange	Amount of Decrease in Principal Amount at Maturity of this Global Note	Amount of Increase in Principal Amount at Maturity of this Global Note	Principal Amount Maturity of this Global Note Following such Decrease (or Increase)

EXHIBIT B-1

FORM OF CERTIFICATE OF TRANSFER

SM Energy Company
1775 Sherman Street, Suite 1200
Denver, Colorado 80203
Facsimile: (303) 861-0934
Attention: Chief Financial Officer

[_____]
[_____]
[_____]
Facsimile: [_____]
Attention: [_____]

Re: 10.00% Senior Secured Notes due 2025

Reference is hereby made to the Indenture, dated as of June 17, 2020 (the "Indenture") among SM Energy Company, a Delaware corporation (the "Company") and U.S. Bank National Association, as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

_____ (the "Transferor") owns and proposes to transfer the Note[s] or interest in such Note[s] specified in Annex A hereto, in the principal amount at maturity of $ _____ in such Note[s] or interests (the "Transfer"), to _____ (the "Transferee"), as further specified in Annex A hereto. In connection with the Transfer, the Transferor hereby certifies that:

[CHECK ALL THAT APPLY]

1. [ ] Check if Transferee will take delivery of a beneficial interest in the 144A Global Note or a Definitive Note Pursuant to Rule 144A. The Transfer is being effected pursuant to and in accordance with Rule 144A under the United States Securities Act of 1933, as amended (the "Securities Act"), and, accordingly, the Transferor hereby further certifies that the beneficial interest or Definitive Note is being transferred to a Person that the Transferor reasonably believed and believes is purchasing the beneficial interest or Definitive Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A and such Transfer is in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the 144A Global Note and/or the Definitive Note and in the Indenture and the Securities Act.

2. [ ] Check if Transferee will take delivery of a beneficial interest in the Regulation S Global Note or a Definitive Note pursuant to Regulation S. The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and, accordingly, the Transferor hereby further certifies that (i) the Transfer is not being made to a person in the United States and (x) at the time the buy order was originated, the Transferee was outside the United States or such Transferor and any Person acting on its behalf reasonably believed and believes that the Transferee was outside the United States or (y) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither such Transferor nor any Person acting on its behalf knows that the transaction was prearranged with a buyer in the United States, (ii) no directed selling efforts have been made in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S under the Securities Act, (iii) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act and (iv) if the proposed transfer is being made prior to the expiration of the Restricted Period, the transfer is not being made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on Transfer enumerated in the Private Placement Legend printed on the Regulation S Global Note and/or the Definitive Note and in the Indenture and the Securities Act.

3. [ ] Check and complete if Transferee will take delivery of a beneficial interest in a Definitive Note pursuant to any provision of the Securities Act other than Rule 144A or Regulation S. The Transfer is being effected in compliance with the transfer restrictions applicable to beneficial interests in Restricted Global Notes and Restricted Definitive Notes and pursuant to and in accordance with the Securities Act and any applicable blue sky securities laws of any state of the United States, and accordingly the Transferor hereby further certifies that (check one):

(a) [ ] such Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act;

or

(b) [ ] such Transfer is being effected to the Company or a subsidiary thereof;

or

(c) [ ] such Transfer is being effected pursuant to an effective registration statement under the Securities Act and in compliance with the prospectus delivery requirements of the Securities Act.

4. [ ] Check if Transferee will take delivery of a beneficial interest in an Unrestricted Global Note or of an Unrestricted Definitive Note.

(a) [ ] Check if Transfer is Pursuant to Rule 144. (i) The Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act and in compliance

with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(b) [ ] Check if Transfer is Pursuant to Regulation S. (i) The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(c) [ ] Check if Transfer is Pursuant to Other Exemption. (i) The Transfer is being effected pursuant to and in compliance with an exemption from the registration requirements of the Securities Act other than Rule 144, Rule 903 or Rule 904 and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any State of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will not be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes or Restricted Definitive Notes and in the Indenture.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company.

_____
[Insert Name of Transferor]

By: _____
Name:
Title:

Dated: _____

ANNEX A TO CERTIFICATE OF TRANSFER

1. The Transferor owns and proposes to transfer the following:

[CHECK ONE OF (A) OR (B)]

(A) [ ] a beneficial interest in the:

(i) 144A Global Note (CUSIP 78454L AT7; ISIN US78454LAT70); or

(ii) Regulation S Global Note (CUSIP U83067 AH8; ISIN USU83067AH83); or

(B) [ ] a Restricted Definitive Note.

2. After the Transfer the Transferee will hold:

[CHECK ONE]

(A) [ ] a beneficial interest in the:

(iii) 144A Global Note (CUSIP 78454L AT7; ISIN US78454LAT70); or

(iv) Regulation S Global Note (CUSIP U83067 AH8; ISIN USU83067AH83); or

(v) Unrestricted Global Note (CUSIP [●]; ISIN [●]);[5] [6] or

(B) [ ] a Restricted Definitive Note; or

(C) [ ] an Unrestricted Definitive Note,

in accordance with the terms of the Indenture.

---

[5] Rule 144A CUSIP: 78454L AT7
Regulation S Note CUSIP: U83067 AH8

[6] Rule 144A ISIN: US78454LAT70
Regulation S Note ISIN: USU83067AH83

EXHIBIT B-2

FORM OF INSTITUTIONAL ACCREDITED INVESTOR CERTIFICATE

[Date]

SM Energy Company
1775 Sherman Street, Suite 1200
Denver, Colorado 80203
Facsimile: (303) 861-0934
Attention: Chief Financial Officer

[_____]
[_____]
[_____]
Facsimile: [_____]
Attention: [_____]

Re: 10.00% Senior Secured Notes due 2025

Ladies and Gentlemen:

This certificate is delivered to request a transfer of $_____ principal amount of the 10.00% Senior Secured Notes due 2025 (the "Securities") of SM Energy Company, a Delaware corporation (the "Company").

Upon transfer, the Securities would be registered in the name of the new beneficial owner as follows:

Name: _____

Address: _____

Taxpayer ID Number: _____

The undersigned represents and warrants to you that:

1. We are an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933, as amended (the "Securities Act")) purchasing for our own account or for the account of such an institutional "accredited investor" at least $250,000 principal amount of the Securities, and we are acquiring the Securities not with a view to, or for offer or sale in connection with, any distribution in violation of the Securities Act. We have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risk of our investment in the Securities and we invest in or purchase securities similar to the Securities in the normal course of our business. We and any accounts for which we are acting are each able to bear the economic risk of our or its investment.

2. We understand that the Securities have not been registered under the Securities Act and, unless so registered, may not be sold except as permitted in the following sentence. We agree on our own behalf and on behalf of any investor account for which we are purchasing Securities to offer, sell or otherwise transfer such Securities prior to the date that is one year after the later of the date of original issue and the last date on which the Company or any affiliate of the Company was the owner of such Securities (or any predecessor thereto) (the "Resale Restriction Termination Date") only (a) to the Company, (b) pursuant to a registration statement which has been declared effective under the Securities Act, (c) in a transaction complying with the requirements of Rule 144A under the Securities Act, to a person we reasonably believe is a qualified institutional buyer under Rule 144A (a "QIB") that purchases for its own account or for the account of a QIB and to whom notice is given that the transfer is being made in reliance on Rule 144A, (d) pursuant to offers and sales that occur outside the United States within the meaning of Regulation S under the Securities Act, (e) to an institutional "accredited investor" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act that is purchasing for its own account or for the account of such an institutional "accredited investor," in each case in a minimum principal amount of Securities of $250,000 or (f) pursuant to any other available exemption from the registration requirements of the Securities Act, subject in each of the foregoing cases to any requirement of law that the disposition of our property or the property of such investor account or accounts be at all times within our or their control and in compliance with any applicable state securities laws. The foregoing restrictions on resale will not apply subsequent to the Resale Restriction Termination Date. If any resale or other transfer of the Securities is proposed to be made pursuant to clause (e) above prior to the Resale Restriction Termination Date, the transferor shall deliver a letter from the transferee substantially in the form of this letter to the Company and the Trustee, which shall provide, among other things, that the transferee is an institutional "accredited investor" (within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act) and that it is acquiring such Securities for investment purposes and not for distribution in violation of the Securities Act. Each purchaser acknowledges that the Company and the Trustee reserve the right prior to any offer, sale or other transfer prior to the Resale Restriction Termination Date of the Securities pursuant to clauses (d), (e) or (f) above to require the delivery of an opinion of counsel, certifications and/or other information satisfactory to the Company and the Trustee.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company.

_____
[Insert Name of Transferor]

By: _____
Name:
Title:

Dated: _____

EXHIBIT C

FORM OF CERTIFICATE OF EXCHANGE

SM Energy Company
1775 Sherman Street, Suite 1200
Denver, Colorado 80203
Facsimile: (303) 861-0934
Attention: Chief Financial Officer

[_____]
[_____]
[_____]
Facsimile: [_____]
Attention: [_____]

Re: 10.00% Senior Secured Notes due 2025

Reference is hereby made to the Indenture, dated as of June 17, 2020 (the "Indenture"), among SM Energy Company, a Delaware corporation (the "Company") and U.S. Bank National Association, as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

_____ (the "Owner") owns and proposes to exchange the Note[s] or interest in such Note[s] specified herein, in the principal amount at maturity of $ in such Note[s] or interests (the "Exchange"). In connection with the Exchange, the Owner hereby certifies that:

1. Exchange of Restricted Definitive Notes or Beneficial Interests in a Restricted Global Note for Unrestricted Definitive Notes or Beneficial Interests in an Unrestricted Global Note

(a) [ ] Check if Exchange is from beneficial interest in a Restricted Global Note to beneficial interest in an Unrestricted Global Note. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for a beneficial interest in an Unrestricted Global Note in an equal principal amount at maturity, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Global Notes and pursuant to and in accordance with the United States Securities Act of 1933, as amended (the "Securities Act"), (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest in an Unrestricted Global Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(b) [ ] Check if Exchange is from beneficial interest in a Restricted Global Note to Unrestricted Definitive Note. In connection with the Exchange of the Owner's beneficial interest

in a Restricted Global Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(c) [ ] Check if Exchange is from Restricted Definitive Note to beneficial interest in an Unrestricted Global Note. In connection with the Owner's Exchange of a Restricted Definitive Note for a beneficial interest in an Unrestricted Global Note, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(d) [ ] Check if Exchange is from Restricted Definitive Note to Unrestricted Definitive Note. In connection with the Owner's Exchange of a Restricted Definitive Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Unrestricted Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Unrestricted Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

2. Exchange of Restricted Definitive Notes or Beneficial Interests in Restricted Global Notes for Restricted Definitive Notes or Beneficial Interests in Restricted Global Notes.

(a) [ ] Check if Exchange is from beneficial interest in a Restricted Global Note to Restricted Definitive Note. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for a Restricted Definitive Note with an equal principal amount at maturity, the Owner hereby certifies that the Restricted Definitive Note is being acquired for the Owner's own account without transfer. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the Restricted Definitive Note issued will continue to be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Definitive Note and in the Indenture and the Securities Act.

(b) [ ] Check if Exchange is from Restricted Definitive Note to beneficial interest in a Restricted Global Note. In connection with the Exchange of the Owner's Restricted Definitive Note for a beneficial interest in the [CHECK ONE] 144A Global Note, Regulation S Global Note, with an equal principal amount at maturity, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer and (ii) such Exchange

has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, and in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the beneficial interest issued will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the relevant Restricted Global Note and in the Indenture and the Securities Act.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company.

_____
[Insert Name of Transferor]

By: _____
Name:
Title:

Dated: _____

EXHIBIT D

FORM OF NOTATION OF GUARANTEE

For value received, each Subsidiary Guarantor (which term includes any successor Person under the Indenture) has, jointly and severally, fully and unconditionally and irrevocably guaranteed, to the extent set forth in the Indenture, dated as of June 17, 2020 (the "Indenture"), among SM Energy Company, a Delaware corporation (the "Company"), and UMB Bank, N.A., as trustee (the "Trustee"), and subject to the provisions in the Indenture, (a) the due and punctual payment of the principal of and interest on the Notes (as defined in the Indenture), whether at Stated Maturity, by acceleration, redemption or otherwise, the due and punctual payment of interest on overdue principal and interest, to the extent permitted by law, and the due and punctual performance of all other obligations of the Company to the Holders or the Trustee all in accordance with the terms of the Indenture and (b) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that the same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. The obligations of the Subsidiary Guarantors to the Holders of Notes and to the Trustee pursuant to the Guarantee and the Indenture are expressly set forth in Article Eleven of the Indenture and reference is hereby made to the Indenture for the precise terms of the Guarantee. This Guarantee shall be governed by and construed in accordance with the laws of the State of New York.

_____
[Insert Name of Guarantor]

By: _____
Name:
Title:

Dated: _____

EXHIBIT E

FORM OF GUARANTOR SUPPLEMENTAL INDENTURE
TO BE DELIVERED BY GUARANTORS

GUARANTOR SUPPLEMENTAL INDENTURE (this "Guarantor Supplemental Indenture"), dated as of _____, among SM Energy Company (the "Company"), the Company's Subsidiaries listed on Schedule A hereto (each, a " New Guarantor"), the Company's Subsidiaries listed on Schedule B hereto (each, an "Existing Guarantor") and UMB Bank, N.A., as trustee under the Indenture referred to below (the "Trustee").

WITNESSETH

WHEREAS, the Company, the Existing Guarantors and the Trustee are parties to an Indenture dated as of June 17, 2020 (the "Indenture") by and between the Company and the Trustee, providing for the issuance of the Company's 10.00% Senior Secured Notes due 2025 (the "Notes");

WHEREAS, Section 10.01 of the Indenture provides that, without the consent of any Holders, the Company, the Existing Guarantors and the Trustee, at any time and from time to time, may modify, supplement or amend the Indenture to add a Subsidiary Guarantor or additional obligor under the Indenture or permit any Person to guarantee the Notes and/or obligations under the Indenture;

WHEREAS, each New Guarantor wishes to guarantee the Notes pursuant to the Indenture;

WHEREAS, pursuant to the Indenture, the Company, the Existing Guarantors, the New Guarantors and the Trustee have agreed to enter into this Guarantor Supplemental Indenture for the purposes stated herein; and

WHEREAS, all things necessary have been done to make this Guarantor Supplemental Indenture, when executed and delivered by the Company, the Existing Guarantors and each New Guarantor, the legal, valid and binding agreement of the Company, the Existing Guarantors and each New Guarantor, in accordance with its terms.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Company, each New Guarantor, the Existing Guarantors and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

(1) Capitalized Terms. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

(2) Guarantee. Each New Guarantor hereby guarantees the obligations of the Company under the Indenture and the Notes related thereto pursuant to the terms and conditions of Article

Ten of the Indenture, such Article Eleven being incorporated by reference herein as if set forth at length herein (each such guarantee, a "Guarantee") and such New Guarantor agrees to be bound as a Subsidiary Guarantor under the Indenture as if it had been an initial signatory thereto; *provided,* that the New Guarantor can be released from its Guarantee to the same extent as any other Subsidiary Guarantor under the Indenture.

(3) GOVERNING LAW. THIS GUARANTOR SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(4) Counterparts. The parties may sign any number of copies of this Guarantor Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

(5) Effect of Headings. The section headings herein are for convenience only and shall not affect the construction hereof.

(6) The Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Guarantor Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Company, Existing Guarantors and the New Guarantors.

IN WITNESS WHEREOF, the parties hereto have caused this Guarantor Supplemental Indenture to be duly executed and attested, all as of the date first above written.

Dated: _____

SM ENERGY COMPANY,
a Delaware corporation

By: _____
Name:
Title:

EACH GUARANTOR LISTED ON
SCHEDULE A HERETO

By: _____
Name:
Title:

EACH GUARANTOR LISTED ON
SCHEDULE B HERETO

By: _____
Name:
Title:

UMB BANK, N.A., as Trustee

By: _____
Authorized Signatory

EXHIBIT 4.2

Execution Version

SM Energy Company
(as Issuer)

and

COMPUTERSHARE INC.

COMPUTERSHARE TRUST COMPANY, N.A.
(collectively as Warrant Agent)

Warrant Agreement

Dated as of June 17, 2020

Warrants Exercisable for
Shares of Common Stock

Table of Contents

WARRANT AGREEMENT, dated as of June 17, 2020, between SM ENERGY COMPANY, a Delaware corporation (as further defined below, the "Company"), and Computershare Inc., a Delaware corporation ("Computershare"), and its wholly-owned subsidiary, Computershare Trust Company, N.A., a federally chartered trust company (collectively with Computershare, the "Warrant Agent");

WHEREAS, the Company has proposed to issue warrants (the "Warrants") to purchase up to an aggregate of 5,941,304 shares of Common Stock (as defined below) of the Company (the Common Stock issuable on exercise of the Warrants being referred to herein as the "Warrant Shares"), to certain holders of the Company's 1.500% Senior Convertible Notes due 2021 (the "Notes") as partial consideration for such Notes;

WHEREAS, each Warrant shall entitle the registered owner thereof to purchase one share of Common Stock, subject to adjustment as provided herein; and

WHEREAS, the Company desires the Warrant Agent to act on behalf of the Company, and the Warrant Agent is willing so to act in connection with the issuance of the Warrants and other matters as provided herein;

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein set forth, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

Section 1.01 Definitions. As used in this Agreement, the following terms shall have the following respective meanings.

"act" has the meaning set forth in Section 8.01.

"Accredited Investor Certificate" means a certificate substantially in the form of Exhibit D hereto.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control," as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise; provided that beneficial ownership of 10% or more of the voting stock of a Person will be deemed to be control. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" have correlative meanings.

"Agent" means any Registrar or Countersignature Agent as the context so requires.

"Agreement" means this Warrant Agreement, as amended or supplemented from time to time.

"Board of Directors" means the Board of Directors of the Company or, with respect to any action to be taken by the Board of Directors, any committee of the Board of Directors duly authorized to take such action.

"Business Day" means each day that is not a Saturday, Sunday or other day on which banking institutions in Denver, Colorado or in New York, New York are authorized or required by law to close.

"Capital Stock" means:

(1) in the case of a corporation, corporate stock;

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(3) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests, respectively; and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

"Certificated Warrant" means a Warrant in registered individual form substantially in the form attached hereto as Exhibit A (together with all attachments specified in this Agreement).

"Commission" means the Securities and Exchange Commission.

"Common Stock" means the common stock, par value $0.01 per share, of the Company or any other Capital Stock of the Company into which such common stock shall be reclassified or changed.

"Company" means SM Energy Company, a Delaware corporation, or any successor to the Company.

"Corporate Trust Office" means the office or offices of the Warrant Agent designated for the purposes contemplated hereunder.

"Countersignature Agent" refers to a Person engaged to countersign the Warrants in the stead of the Warrant Agent.

"Depositary" means the depositary of each Global Warrant, which will initially be DTC.

"DTC" means The Depository Trust Company, a New York corporation, and its successors.

"DTC Legend" means the legend set forth in Exhibit B-1.

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

"Exercise Notice" has the meaning assigned to such term in Section 4.01(b).

"Exercise Price" means $0.01, subject to adjustment pursuant to Section 6.01.

"Expiration Time" has the meaning assigned to such term in Section 4.01(a).

"Funds" has the meaning assigned to such term in Section 8.12.

"GAAP" means generally accepted accounting principles in the United States.

"Global Warrant" means a Warrant registered in global form substantially in the form attached hereto as Exhibit A (together with all attachments specified in this Agreement).

"Holder" means the registered holder of any Warrant.

"Issue Date" means the date of this Agreement.

"National Securities Exchange" means an exchange registered with the Commission under Section 6(a) of the Exchange Act.

"NYSE" means the New York Stock Exchange.

"Officer" means the Chief Executive Officer, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary, any Senior Vice President, any Vice President or any Assistant Vice President of the Company or any correlative position.

"Officers' Certificate" means a certificate signed by two Officers, and delivered to the Warrant Agent, that meets the requirements set forth herein.

"Opinion of Counsel" means a written opinion signed by legal counsel, who may be an employee of or counsel to the Company, satisfactory to the Warrant Agent.

"Participant" means any direct participant of the Depositary, the account of which is credited with a beneficial interest in a Global Warrant for the benefit of any Person beneficially owning an interest in such Global Warrant through the book-entry system maintained by the Depositary (or its agent).

"Per Share Price" means, with respect to any determination of the per share price of the Company's Common Stock hereunder, (i) if the Company's Common Stock is traded on a

National Securities Exchange, the closing sale price per share of the Company's Common Stock as reported on the principal National Securities Exchange on which the Company's Common Stock is traded for the Trading Day immediately prior to the date of such determination, or (ii) if the Company's Common Stock is not listed on a National Securities Exchange and is actively traded over-the-counter, the closing sale price per share (or if no closing sale price is reported, the average of the closing bid and closing ask prices or, if more than one in either case, the average of the average closing bid and the average closing ask prices) of the Company's Common Stock as reported by OTC Markets Group Inc. or a similar organization for the Trading Day immediately prior to the date of such determination; or (iii) if neither of the foregoing clauses (i) or (ii) is applicable, the per share price of the Company's Common Stock as determined in good faith by the Board of Directors, based on relevant facts and circumstances at the time of such determination, including, in the case of a change of control of the Company, the consideration receivable by the holders of the Common Stock in such change of control.

"Person" means any individual, corporation, company, voluntary association, partnership, joint venture, trust, limited liability company, unincorporated organization, government or any agency, instrumentality or political subdivision thereof or any other form of entity.

"Register" has the meaning assigned to such term in Section 3.08.

"Registrar" means a Person engaged to maintain the Register.

"Restricted Legend" means the legend set forth in Exhibit B-2.

"Rule 144" means Rule 144 promulgated under the Securities Act.

"Rule 144A" means Rule 144A under the Securities Act.

"Rule 144A Certificate" means a certificate substantially in the form of Exhibit C hereto.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Subsidiary" means, with respect to any specified Person: (a) any corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person; and (b) any partnership (i) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person, or (ii) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

"Trading Day" means a day during which trading in securities generally occurs on the NYSE or, if the Common Stock is not listed on the NYSE, on the principal other National Securities Exchange or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not listed on a National Securities Exchange or regional securities exchange, on the principal other market on which the Common Stock is then traded. If the Common Stock is not so listed or traded, "Trading Day" shall mean a Business Day.

"Transfer Agent" has the meaning assigned to such term in Section 5.04(b).

"Triggering Date" means the first Trading Day following five consecutive Trading Days on which the product of the number of shares of Common Stock issued and outstanding on four of the five Trading Days multiplied by the closing price per share of Common Stock for each such Trading Day, is at least $1 billion.

"Warrant Agent" means the party named as such in the first paragraph of this Agreement or any successor warrant agent under this Agreement pursuant to Article VII.

"Warrant Certificate" means a certificate for a Certificated Warrant or a Global Warrant, as applicable.

"Warrant Shares" has the meaning assigned to such term in the Recitals.

"Warrants" has the meaning assigned to such term in the Recitals.

Section 1.02 Rules of Construction. Unless the context otherwise requires :

(a) a term has the meaning assigned to it;

(b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
(c) "or" is not exclusive;

(d) words in the singular include the plural, and words in the plural include the singular;

(e) "herein," "hereof" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision;
(f) when the words "includes" or "including" are used herein, they shall be deemed to be followed by the words "without limitation;"

(g) all references to Sections or Articles or Exhibits refer to Sections or Articles or Exhibits of or to this Agreement unless otherwise indicated; and

(h) references to agreements or instruments, or to statutes or regulations, are to such agreements or instruments, or statutes or regulations, as amended, supplemented or modified from time to time (or to successor statutes and regulations).

ARTICLE II
APPOINTMENT OF WARRANT AGENT

Section 2.01 Appointment of Warrant Agent. The Company hereby appoints the Warrant Agent to act as agent for the Company with respect to the Warrants in accordance with the express terms and conditions set forth hereinafter in this Agreement (and no implied terms and conditions), and the Warrant Agent hereby accepts such appointment and shall perform the same in accordance with the express terms and conditions set forth in this Agreement.

ARTICLE III
THE WARRANTS

Section 3.01 Form and Dating; Legends. (a) The Warrants shall initially be issued by the Company as of the Issue Date in uncertificated, book entry form; provided, that some or all of the Warrants may, at their initial issuance or any time thereafter, be represented by one or more Global Warrants; and, provided, further, that the Holders shall be entitled to, and upon request from a Holder, the Company shall promptly cause to be delivered to the Holder, Certificated Warrants. The Company shall provide prompt written notice to the Warrant Agent of any request for Certificated Warrants. Any Warrants issued in certificated form (whether Global Warrants or Certificated Warrants) will be substantially in the form attached as Exhibit A. The terms and provisions contained in the form of the Warrant Certificates attached as Exhibit A constitute, and are hereby expressly made, a part of this Agreement. The Warrants may have notations, legends or endorsements required by law, rules of or agreements with National Securities Exchanges to which the Company is subject.

(b) Except as otherwise provided in Section 3.01(c) or Section 3.09, each Warrant will bear the Restricted Legend.

(c) (i) If the Company determines (upon the advice of counsel and such other certifications and evidence as the Company may reasonably require) that a Warrant is eligible for resale pursuant to Rule 144 (or a successor provision) without the need to satisfy current information or other requirements therein and that the Restricted Legend is no longer necessary or appropriate in order to ensure that subsequent transfers of the Warrant are effected in compliance with the Securities Act, or (ii) after a Warrant is sold pursuant to an effective registration statement under the Securities Act, then, in each case, the Company may instruct the Warrant Agent in writing to cancel the Warrant and issue to the Holder thereof (or to its transferee) a new Warrant of like tenor, registered in the name of the Holder thereof (or its transferee), that does not bear the Restricted Legend, with an Opinion of Counsel reasonably acceptable to the Warrant Agent that no Restricted Legend is required, and the Warrant Agent will comply with such instruction.

(d) By its acceptance of any Warrant bearing the Restricted Legend, each Holder thereof and each owner of a beneficial interest therein acknowledges the restrictions on transfer of such Warrant set forth in this Agreement and in the Restricted Legend and agrees that it will transfer such Warrant only in accordance with this Agreement and such legend.

Section 3.02 Execution and Countersignature. (a) With respect to Warrants issued in certificated form, if any, an Officer shall execute the Warrants for the Company by facsimile or manual signature in the name and on behalf of the Company. If an Officer whose signature is on a Warrant no longer holds that office after the time the Warrant is countersigned, the Warrant will still be valid.

(b) A Warrant in certificated form will not be valid until an authorized signatory of the Warrant Agent countersigns the Warrant, by manual or facsimile signature, and the signature shall be conclusive evidence that the Warrant has been countersigned under this Agreement. At any time, and from time to time after the execution and delivery of this Agreement, the Company may deliver Warrants executed by the Company to the Warrant Agent for countersignature. An authorized signatory of the Warrant Agent will so countersign and deliver Warrants for original issue after receipt by the Warrant Agent of an Officers' Certificate specifying (i) the number of Warrants to be countersigned and the date on which the Warrants are to be countersigned, (ii) whether the Warrants are to be issued as one or more Global Warrants or as Certificated Warrants and (iii) other information the Company may determine to include or the Warrant Agent may reasonably request.

Section 3.03 Warrant Registrar and Countersignature Agent. The Company may appoint one or more Registrars, and the Warrant Agent may appoint a Countersignature Agent, in which case each reference in this Agreement to the Warrant Agent in respect of the obligations of the Warrant Agent to be performed by that Countersignature Agent will be deemed to be references to the Countersignature Agent. The Company may act as Registrar. In each case the Company and the Warrant Agent will enter into an appropriate agreement with the Countersignature Agent implementing the provisions of this Agreement relating to the obligations of the Warrant Agent to be performed by the Countersignature Agent and the related rights. The Company initially appoints the Warrant Agent as Registrar. The Company may appoint another Person as Registrar upon ten (10) days' prior written notice to the Warrant Agent. In the event that another Person is appointed as Registrar, the Warrant Agent shall have no duty to supervise, and in no event shall it be liable for, the acts or omissions of any such Registrar.

Section 3.04 Replacement Warrants. With respect to Warrants issued in certificated form, if any, the Warrant Agent shall issue replacement Warrants of like tenor for those certificates alleged to have been lost, stolen or destroyed, upon receipt by the Warrant Agent and the Company of (i) evidence reasonably satisfactory to the Warrant Agent of such loss, theft or destruction of such Warrants, including, in the case of lost certificates, an affidavit of loss, or in the case of mutilated certificates, the certificate or portion thereof remaining, and (ii) indemnity satisfactory to both the Warrant Agent and the Company (unless waived by the Warrant Agent or the Company, as applicable) and holding the Warrant Agent and Company harmless. The Company may charge the Holder for the expenses of the Company and the Warrant Agent in replacing a Warrant.

Section 3.05 Outstanding Warrants. (a) Warrants outstanding at any time are all Warrants that have been countersigned by the Warrant Agent except for: (i) Warrants

canceled by the Warrant Agent or the Company or delivered to the Warrant Agent for cancellation; (ii) Warrants duly exercised by the Holder thereof; (iii) any Warrant which has been replaced pursuant to Section 3.04 unless and until the Warrant Agent and the Company receive proof satisfactory to them that the replaced Warrant is held by a *bona fide* purchaser, in which case the replacement Warrant issued pursuant to Section 3.04 shall be automatically canceled; and (iv) Warrants that have terminated or expired in accordance with the terms thereof or by operation of law.

(b) A Warrant does not cease to be outstanding because the Company or one of its Affiliates holds the Warrant, provided that in determining whether the Holders of the requisite principal amount of the outstanding Warrants have given or taken any notice, consent, waiver or other action hereunder, Warrants owned by the Company or any Affiliate of the Company will be disregarded and deemed not to be outstanding.

Section 3.06 Cancellation. Notwithstanding any Warrants canceled in accordance with Section 4.01, the Company will promptly deliver to the Warrant Agent for cancellation any Warrants previously countersigned and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Warrant Agent for cancellation any Warrants previously countersigned hereunder which the Company has not issued and sold. Any Registrar will forward to the Warrant Agent any Warrants surrendered to it for transfer or exchange. The Warrant Agent will cancel all Warrants surrendered for transfer, exchange or cancellation and dispose of them in accordance with its normal procedures, and subject to its document management policies. Certification of the cancellation of all canceled Warrants shall be delivered to the Company upon written request. The Company may not issue new Warrants to replace Warrants that have been exercised or delivered to the Warrant Agent for cancellation.

Section 3.07 CUSIP Numbers. The Company in issuing the Warrants may use "CUSIP" numbers for the Warrants and the Warrant Agent will use such CUSIP numbers in notices as a convenience to Holders, with any such notice stating that no representation is made as to the correctness of such numbers either as printed on the Warrants or as contained in any notice to any Holder. The Company will promptly notify the Warrant Agent in writing of any change in such CUSIP numbers.

Section 3.08 Registration, Transfer and Exchange. (a) Except as set forth in this Agreement, the Warrants shall be issued in registered form only, and the Company shall cause the Registrar to maintain a register (the "Register") for registering the record ownership of the Warrants by the Holders and transfers and exchanges of the Warrants.

(b) (i) Each Global Warrant will be registered in the name of the Depositary or its nominee and, so long as DTC is serving as the Depositary thereof, will bear the DTC Legend.

(ii) Each Global Warrant will be delivered to the Warrant Agent as custodian for the Depositary. Transfers of a Global Warrant (but not a beneficial interest therein) will be limited to transfers thereof in whole, but not in part, to the Depositary, its successors or

their respective nominees, except (1) transfers as set forth in clause (iv) of this Section 3.08 and (2) transfers of portions of a Global Warrant in the form of Certificated Warrants, which may be made upon request of a Participant (for itself or on behalf of a beneficial owner) by written notice given to the Warrant Agent by or on behalf of the Depositary in accordance with customary procedures of the Depositary and in compliance with this Section 3.08 and Section 3.09.

(iii) Participants will have no rights under the Agreement with respect to any Global Warrant held on their behalf by the Depositary, and the Depositary may be treated by the Company, the Warrant Agent and any agent of the Company or the Warrant Agent as the absolute owner and Holder of such Global Warrant for all purposes whatsoever. Notwithstanding the foregoing, the Depositary or its nominee may grant proxies and otherwise authorize any Person (including any Participant and any Person that holds a beneficial interest in a Global Warrant through a Participant) to take any action which a Holder is entitled to take under the Warrant or the Warrants, and nothing herein will impair, as between the Depositary and its Participants, the operation of customary practices governing the exercise of the rights of a holder of any security.

(iv) If (x) the Depositary notifies the Company that it is unwilling or unable to continue as Depositary for a Global Warrant and a successor depositary is not appointed by the Company within 90 days of the notice or (y) the Warrant Agent has received a request from the Depositary, the Warrant Agent will promptly exchange each beneficial interest in the Global Warrant for one or more Certificated Warrants in authorized denominations having an equal aggregate principal amount registered in the name of the owner of such beneficial interest, as identified to the Warrant Agent by the Depositary, and thereupon the Global Warrant will be deemed canceled.

(c) Each Certificated Warrant will be registered in the name of the Holder thereof or its nominee.

(d) Subject to Section 3.09 hereof, a Holder may transfer a Warrant (or a beneficial interest therein) to another Person or exchange a Warrant (or a beneficial interest therein) for another Warrant by presenting to the Registrar a written request therefor stating the name of the proposed transferee or requesting such an exchange, accompanied by any certification, opinion or other document required by this Agreement or reasonably requested by the Warrant Agent or Registrar, including an Opinion of Counsel that the transfer of the Warrants is being made in accordance with the Securities Act and applicable state securities laws. The Registrar will with reasonable promptness register any transfer or exchange that meets the requirements of this Section 3.08 by noting the same in the Register; provided that no transfer or exchange will be effective until it is registered in the Register. Prior to the registration of any transfer, the Company, the Warrant Agent and their agents will treat the Person in whose name the Warrant is registered as the owner and Holder thereof for all purposes, and will not be affected by notice to the contrary.

From time to time, the Company will execute and the Warrant Agent will countersign additional Warrants as necessary in order to permit the registration of a transfer or

exchange in accordance with this Section. All Warrants issued upon transfer or exchange shall be the duly authorized, executed and delivered Warrants of the Company entitled to the benefits of this Agreement.

No service charge will be imposed in connection with any transfer or exchange of any Warrant, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith.

A party requesting transfer of Warrants or other securities must provide any evidence of authority or other documentation that may be required by the Warrant Agent, including, but not limited to, a signature guarantee from an eligible guarantor institution participating in a signature guarantee program approved by the Securities Transfer Association.

Subject to Section 3.09 and the other provisions of this Section 3.08, the Holder of a Certificated Warrant must surrender the Warrant Certificate to the Warrant Agent in order to effect a transfer or exchange of all or any portion of such Certificated Warrant.

(e) (i) *Global Warrant to Global Warrant.* Subject to Section 3.09, if there is more than one Global Warrant and a beneficial interest in a Global Warrant is transferred or exchanged for a beneficial interest in another Global Warrant in accordance with this Section 3.08, the Warrant Agent will (x) record a decrease in the amount of the Global Warrant being transferred or exchanged equal to the amount of such transfer or exchange and (y) record a like increase in the amount of the other Global Warrant. Any beneficial interest in one Global Warrant that is transferred to a Person who takes delivery in the form of an interest in another Global Warrant, or exchanged for an interest in another Global Warrant, will, upon transfer or exchange, cease to be an interest in such Global Warrant and become an interest in the other Global Warrant and, accordingly, will thereafter be subject to all transfer and exchange restrictions, if any, and other procedures applicable to beneficial interests in such other Global Warrant for as long as it remains such an interest.

(ii) *Global Warrant to Certificated Warrant.* Subject to Section 3.09, if a beneficial interest in a Global Warrant is transferred or exchanged for a Certificated Warrant in accordance with this Section 3.08, the Warrant Agent will (x) record a decrease in the principal amount of such Global Warrant equal to the principal amount of such transfer or exchange and (y) deliver a new Certificated Warrants to the transferee (in the case of a transfer) or the owner of such beneficial interest (in the case of an exchange), registered in the name of such transferee or owner, as applicable.

(iii) *Certificated Warrant to Global Warrant.* Subject to Section 3.09, if a Certificated Warrant is transferred or exchanged for a beneficial interest in a Global Warrant in accordance with this Section 3.08, the Warrant Agent will (x) cancel such Certificated Warrant, (y) record an increase in such Global Warrant equal to the number of Warrants being transferred or exchanged and (z) in the event that such transfer or exchange involves less than the entire amount of the canceled Certificated Warrant, deliver to the Holder thereof one or more new Certificated Warrants having an

aggregate number of Warrants equal to the untransferred or unexchanged portion of the canceled Certificated Warrant, registered in the name of the Holder thereof.

(iv) *Certificated Warrant to Certificated Warrant.* Subject to Section 3.09, if a Certificated Warrant is transferred or exchanged for another Certificated Warrant in accordance with this Section 3.08, the Warrant Agent will (x) cancel the Certificated Warrant being transferred or exchanged, (y) deliver one or more new Certificated Warrants having an aggregate principal amount equal to the amount of Warrants being transferred or exchanged to the transferee (in the case of a transfer) or the Holder of the canceled Certificated Warrant (in the case of an exchange), registered in the name of such transferee or Holder, as applicable, and (z) if such transfer or exchange involves less than the entire amount of the canceled Certificated Warrant, deliver to the Holder thereof one or more Certificated Warrants having an aggregate amount of Warrants equal to the untransferred or unexchanged portion of the canceled Certificated Warrant, registered in the name of the Holder thereof.

Section 3.09 Restrictions on Transfer and Exchange. (a) The transfer or exchange of any Warrant may only be made in accordance with this Section 3.09 and Section 3.08. Subject to Section 3.09(b), the Person requesting the transfer or exchange must deliver or cause to be delivered to the Warrant Agent a properly completed and duly executed transfer notice, the form of which is on the reverse side of the form of Warrant Certificate attached hereto as Exhibit A, a properly completed and duly executed Rule 144A Certificate or Accredited Investor Certificate and such other certifications and evidence as the Company may reasonably require in order to determine that the proposed transfer or exchange is being made in compliance with the Securities Act and any applicable securities laws of any state of the United States.

(b) No Rule 144A Certificate, Accredited Investor Certificate or other certification and evidence is required in connection with any transfer or exchange of any Warrant (or a beneficial interest therein):

(i) after such Warrant is eligible for resale pursuant to Rule 144 (or a successor provision) without the need to satisfy current information or other requirements therein; provided that the Company and Registrar may require from any Person requesting a transfer or exchange in reliance upon this clause (i) any other reasonable certifications and evidence in connection with such resale; or

(ii) sold pursuant to an effective registration statement.

The Warrant Agent shall have received an Opinion of Counsel in form and substance reasonably acceptable to the Warrant Agent that Warrants may be transferred in accordance with this paragraph. Any Warrant delivered in reliance upon this paragraph will not bear the Restricted Legend.

(c) The Registrar will retain electronic copies of all certificates and other documents received in connection with the transfer or exchange of a Warrant, and the Company

will have the right to inspect and make copies thereof at any reasonable time upon written notice to the Registrar.

(d) Notwithstanding anything to the contrary contained in this Agreement, the number of shares of Common Stock that may be issued under the Warrants for any reason shall not exceed the maximum number of shares of Common Stock which the Company may issue without stockholder approval under the stockholder approval rules of the NYSE, including Section 312.03 of the NYSE Listed Company Manual, unless the requisite stockholder approval has been obtained.

Section 3.10 Registration.

(a) The Company agrees that, within ninety (90) calendar days following written notice from Holders of such Holders' exercise of Warrants for an aggregate minimum of 25% of the total number of Warrant Shares for which Warrants issued under this Agreement could be exercised (giving effect to the anti-dilution adjustments in the Warrants) (the "Filing Date"), the Company will file with the Commission a shelf registration statement on Form S-3 (the "Registration Statement") registering the resale of the Warrant Shares on a delayed and continuous basis, and the Company shall use its reasonable best efforts to have the Registration Statement declared effective as soon as reasonably practicable after the Filing Date and maintain the effectiveness of the Registration Statement until the earlier of (x) such time as all of the Warrant Shares have been sold thereunder, or are eligible for resale without restriction on volume or manner of sale and without the need for current public information pursuant to Rule 144(b) under the Securities Act, and (y) the Expiration Time. In order to be named as a selling security holder in any prospectus which is part of the Registration Statement at the time of effectiveness of the Registration Statement, each Holder must, before the effectiveness of the Registration Statement, have furnished such information regarding each such Holder, the securities of the Company held by each such Holder and the intended method of disposition of the Warrant Shares as shall be reasonably requested by the Company to effect the registration of the Warrant Shares, and executing such documents in connection with such registration as the Company may reasonably request that are customary of a selling stockholder in similar situations, in each case containing no material misstatement of fact and not omitting 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, not misleading. The Company's obligation to include the resale of any Holder's Warrant Shares in the Registration Statement is contingent upon such Holder furnishing in writing to the Company the information referred to in the preceding sentence.

(b) Notwithstanding anything to the contrary contained herein, the Company may, upon written notice to the Warrant Agent, delay the filing of the Registration Statement, delay requesting effectiveness of such Registration Statement or, if such Registration Statement has already become effective, suspend the use of any prospectus which is a part of the Registration Statement if the Company determines in good faith that such delay or suspension is necessary to (A) delay the disclosure of material non-public information concerning the Company, the disclosure of which is not, in the good faith opinion of the Company, in the best

interests of the Company, or (B) amend or supplement the Registration Statement or the related prospectus so that such Registration Statement or 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 case of the prospectus, in light of the circumstances under which they were made), not misleading (an "Allowed Delay"); provided that the Company shall use its reasonable best efforts to terminate an Allowed Delay as promptly as practicable. Upon disclosure of such information or the termination of the condition described above, the Company shall provide prompt notice to Holder and the Warrant Agent and shall promptly terminate any suspension of sales it has put into effect and shall take such other actions to permit registered sales of Warrant Shares as contemplated in this Section 3.10.

ARTICLE IV
TERMS OF WARRANTS; EXERCISE OF WARRANTS

Section 4.01 Terms of Warrants; Exercise of Warrants.

(a) Subject to the terms of this Agreement, a Warrant shall be exercisable, at the election of the Holder thereof, either in full or from time to time in part during the period from and after Triggering Date, until 5:00 p.m., New York City time, on June 30, 2023 (the "Expiration Time"), and shall entitle the Holder thereof to receive Warrant Shares from the Company. No adjustments as to dividends will be made upon exercise of the Warrants. Each Warrant not exercised prior to the Expiration Time shall, automatically, without further action on the party of the Company, the Warrant Agent, any Holder or any other party, become void and all rights thereunder and all rights in respect thereof under this Agreement shall cease as of such time. The Company shall provide the Warrant Agent or the Holders of at least 25% of the outstanding Warrants shall provide the Company and the Warrant Agent with prompt written notice of the occurrence of the Triggering Date, and promptly following the provision of such notice, the Company shall cause to be given to each of the Holders written notice of such occurrence of the Triggering Date by first-class mail, postage prepaid. Until it has received such notice, the Warrant Agent may presume conclusively for all purposes that the Triggering Date has not occurred.

(b) In order to exercise all or any of the Warrants, the Holder thereof must deliver to the Warrant Agent (i) the form of purchase election on the reverse side of the form of Warrant Certificate attached hereto as Exhibit A, properly completed and duly executed by the Holder and, (A) with respect to any Warrants held by any Holder through a direct or indirect participant of the Depositary, effect exercise pursuant to the applicable rules of the Depositary for warrant exercise, or (B) with respect to all or any portion of Certificated Warrants, surrender to the Warrant Agent of the related Warrant Certificate; and (ii) payment, for the account of the Company, of the applicable Exercise Price for each Warrant Share issuable upon the exercise of such Warrants then exercised (a "Cash Exercise"). Such payment shall be made by wire transfer of funds to an account designated by the Warrant Agent for such purpose.

(c) At the option of each Holder in lieu of a Cash Exercise, each exercise of a Warrant may be "net share settled" (a "Cashless Exercise"), whereupon the Warrant will be

converted into shares of Common Stock and the Company will issue to the Holder the Warrant Shares equal to the result obtained by (i) subtracting B from A, (ii) dividing the result by A, and (iii) multiplying the difference by C as set forth in the following equation:

$$X = ((A\ \ B)/A) \times C$$

where:

X = the Warrant Shares issuable upon exercise pursuant to this paragraph (c).

A = the Per Share Price of the Common Stock, calculated as of the date on which the Holder delivers the applicable Exercise Notice.

B = the Exercise Price.

C = with respect to the Warrant then being exercised, the number of shares of Common Stock such Warrant is exercisable for, prior to the Cashless Exercise procedures pursuant to this paragraph (c).

If the foregoing calculation results in a negative number, then no shares of Common Stock shall be issued upon exercise pursuant to this paragraph (c).

The Company shall calculate and transmit to the Warrant Agent and the Holder of the Warrant then being exercised, and the Warrant Agent shall have no obligation under this Agreement to calculate, the number of Warrant Shares issuable upon the exercise of such Warrants. The number of shares of Common Stock to be issued on such exercise will be determined by the Company (with written notice thereof to the Warrant Agent) using the formula set forth in this Section 4.01(c). The Warrant Agent shall have no duty or obligation to investigate or confirm whether the Company's determination of the number of shares of Common Stock to be issued on such exercise, pursuant to this Section 4.01(c) is accurate or correct.

(d) Subject to Section 4.01(i), with respect to Warrants issued in certificated form, upon compliance with the provisions set forth above, the Company shall promptly deliver or cause to be delivered, to or upon the written order of the Holder and in such name or names as the Holder may designate, a certificate or certificates for the number of whole Warrant Shares issuable upon the exercise of such Warrants or other securities or property to which such Holder is entitled, together with cash in lieu of fractional shares as provided in Section 6.02 hereof. Such certificate or certificates or other securities or property shall be deemed to have been issued, and any person so designated to be named therein shall be deemed to have become a holder of record of such Warrant Shares or other securities or property, as of the date of the surrender of such Warrants and payment of the Exercise Price, notwithstanding that the stock transfer books of the Company shall then be closed or the certificates or other securities or property have not been delivered.

(e) With respect to Warrants issued in certificated form, and subject to the other terms of this Agreement, if all Warrants represented by a Warrant Certificate shall not have been exercised in full, the Warrant Agent shall (i) in respect of a Global Warrant, note and authenticate such decrease in the Number of Warrants on Schedule A of such Global Warrant, and (ii) in the case of a Certificated Warrant, cancel the Warrant Certificate for the surrendered Certificated Warrant (and dispose of such certificate in a manner satisfactory to the Company), prepare a new Certificated Warrant of the same tenor for the number of Warrants that were not so exercised, and countersign and deliver the new Warrant Certificate to the Person or Persons entitled to receive the same.

(f) The Warrant Agent shall forward funds received for warrant exercises in a given month by the 5th business day of the following month by wire transfer to an account designated by the Company.

(g) Certificates, if any, representing Warrant Shares shall bear a Restricted Legend (with all references to Warrants therein replaced by references to Common Stock, and with such changes thereto as the Company may deem appropriate, but without adversely affecting the rights or responsibilities of the Warrant Agent) if (i) the Warrants for which the Warrant Shares were issued carried a Restricted Legend or (ii) the Warrant Shares are issued in a transaction exempt from registration under the Securities Act (other than the exemption provided by Section 3(a)(9) of the Securities Act), in each case until and unless the circumstances set forth in Section 3.01(c) apply to such Shares, and any transfers thereof shall comply with the Restricted Legend.

(h) Notwithstanding anything to the contrary herein, (i) unless otherwise agreed by the Company and the Holder and written notice is given to the Warrant Agent, the Warrant Shares shall be in uncertificated, book entry form as permitted by the amended and restated bylaws of the Company and the Delaware General Corporation Law, and (ii) delivery of Warrant Shares upon exercise of a Warrant shall be made to the applicable Holder through the facilities of The Depository Trust Company as directed by such Holder unless such Holder shall otherwise instruct.

Section 4.02 Conditional Exercise. Notwithstanding any other provision hereof, if an exercise of any portion of a Warrant is to be made in connection with a public offering or a sale of the Company (pursuant to a merger, sale of stock or otherwise), such exercise may at the election of the Holder be conditioned upon the consummation of such transaction, in which case such exercise shall not be deemed to be effective until immediately prior to the consummation of such transaction.

Section 4.03 Cost Basis Information.

(a) In the event of a cash exercise of the Warrants, the Company hereby instructs the Warrant Agent to record cost basis for newly issued Warrant Shares to be equal to the Exercise Price.

(b) In the event of a Cashless Exercise, the Company shall provide cost basis for Warrant Shares issued pursuant to a cashless exercise at the time the Company confirms the number of Warrant Shares issuable in connection with the cashless exercise to the Warrant Agent pursuant to Section 4.01(c) hereof.

ARTICLE V
COVENANTS OF THE COMPANY

Section 5.01 Maintenance of Office or Agency. The Company will maintain in the United States an office or agency where Warrants may be surrendered for registration of transfer or exchange or for presentation for exercise. The Company hereby initially designates the Corporate Trust Office of the Warrant Agent as such office of the Company. The Company will give prompt written notice to the Warrant Agent of the location, and any change in the location, of such office or agency. If at any time the Company fails to maintain any such required office or agency or fails to furnish the Warrant Agent with the address thereof, such presentations and surrenders may be delivered to the Warrant Agent.

The Company may also from time to time designate one or more other offices or agencies where the Warrants may be surrendered or presented for any of such purposes and may from time to time rescind such designations. The Company will give prompt written notice to the Warrant Agent of any such designation or rescission and of any change in the location of any such other office or agency. The Warrant Agent shall not have any responsibility or liability with respect to physical custody of Warrants unless and until they are actually surrendered or delivered to the Warrant Agent.

Section 5.02 Payment of Taxes. The Company will pay all documentary, stamp or similar issue or transfer taxes in respect of the issuance or delivery of Warrant Shares upon the exercise of Warrants; provided that the exercising Holder shall be required to pay any tax or taxes which may be payable in respect of any transfer involved in the issue of any Warrants or any Warrant Shares in a name other than that of the registered holder of a Warrant surrendered upon exercise.

Section 5.03 Rule 144A(d)(4) Information. For so long as any of the Warrants or Warrant Shares remain outstanding and constitute "restricted securities" under Rule 144, the Company will make available upon request to any prospective purchaser of the Warrants or Warrant Shares or beneficial owner of Warrants or Warrants Shares in connection with any sale thereof the information required by Rule 144A(d)(4); provided that such information shall be deemed conclusively to be made available pursuant to this Section 5.03 if the Company has filed such information with the Commission via its Electronic Data Gathering, Analysis and Retrieval System and such information is publicly available on such system.

Section 5.04 Reservation of Warrant Shares.

(a) The Company will reserve and keep available for issuance and delivery such number of its authorized but unissued shares of Common Stock or other securities of the

Company as will from time to time be sufficient to permit the exercise in full of all outstanding Warrants, which shares or securities will, when issued, be free and clear of all liens, security interests, charges and other encumbrances and free and clear of all preemptive rights.

(b) The Company will authorize and direct the transfer agent for the Common Stock (the "Transfer Agent") and every subsequent transfer agent for any securities of the Company issuable upon the exercise of the Warrants to reserve such number of authorized securities as shall be required for such purpose. The Company will supply such Transfer Agent with duly executed certificates for such purposes and will provide or otherwise make available any cash which may be payable as provided in Section 6.02 hereof. The Company will furnish such Transfer Agent a copy of all notices of adjustments, and certificates related thereto, transmitted to each Holder pursuant to Section 6.01(d) hereof.

Section 5.05 Listing. The Company shall use commercially reasonable efforts to cause the Warrant Shares, immediately upon such exercise, to be listed on the NYSE or the principal National Securities Exchange on which shares of Common Stock or other securities constituting Warrant Shares are listed at the time of such exercise.

Section 5.06 Applicable Law. The Company shall take all such actions as may be necessary to ensure that all Warrant Shares are issued without violation by the Company of any applicable law or governmental regulation or any requirements of any securities exchange upon which shares of Common Stock or other securities constituting Warrant Shares may be listed at the time of such exercise.

ARTICLE VI
ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF WARRANT SHARES ISSUABLE

Section 6.01 Adjustment to Number of Warrant Shares. The Exercise Price and the number of Warrant Shares issuable upon the exercise of each Warrant are subject to adjustment from time to time upon the occurrence of the events enumerated in this Section 6.01.

In the event that, at any time as a result of the provisions of this Section 6.01, the Holders of the Warrants shall become entitled upon subsequent exercise to receive any shares of Capital Stock of the Company other than Common Stock, the number of such other shares so receivable upon exercise of the Warrant shall thereafter be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions contained herein.

(a) *Stock Dividends and Distributions, Stock Splits and Reclassifications*. The Exercise Price and the number of Warrant Shares shall be adjusted pursuant to the formulas below in the event that the Company pays a dividend in shares of Common Stock or makes a distribution in shares of Common Stock to holders of its outstanding Common Stock, subdivides its outstanding shares of Common Stock into a greater number of shares Common Stock, combines its outstanding shares of Common Stock into a smaller number of shares of Common Stock, or issues any shares of its Capital Stock in a reclassification of the Common Stock. Any

adjustment made herein that results in a decrease (or increase) in the Exercise Price shall also result in a proportional increase (or decrease) in the number of Shares into which the Warrant is exercisable. Successive adjustments in the Exercise Price and number of Shares shall be made whenever any event specified above shall occur. An adjustment made pursuant to this Section 6.01(a) shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event.

$$Ua = Ub \times (Oa/Ob)$$

$$Pa = Pb \times (Ob/Oa)$$

where:

Ub = the number of Warrant Shares issuable upon exercise of the Warrants before the adjustment.

Ua = the number of Warrant Shares issuable upon exercise of the Warrants after the adjustment

Pb = the Exercise Price before the adjustment.

Pa = the Exercise Price after the adjustment.

Ob = Number of shares of Common Stock outstanding immediately before the transaction in question.

Oa = Number of shares of Common Stock outstanding immediately after the transaction in question.

(b) *Replacement of Securities upon Reorganization, etc.* In case the Company shall (i) reorganize its capital or reclassify its capital stock (in each case, other than a change in par value), (ii) consolidate or merge with or into another Person (where the Company is not the surviving corporation or where there is a change in or distribution with respect to the Common Stock of the Company), (iii) sell, transfer or otherwise dispose of all or substantially all of its and its subsidiaries' property, assets or business to another Person, or (iv) make a distribution in shares of capital stock of any class or series, or similar equity interest, of or relating to a subsidiary or other business unit to holders of its Common Stock, in each case to the extent not covered by Section 6.01(a), and, pursuant to the terms of such reorganization, reclassification, merger, consolidation, distribution or disposition of assets, shares of common stock of the successor or acquiring Person, or any cash, shares of stock or other securities or property of any nature whatsoever (including warrants or other subscription or purchase rights) in addition to or in lieu of common stock of the successor or acquiring Person ("Other Property"), are to be received by or distributed to the holders of Common Stock of the Company, then each Holder shall have the right, effective upon the consummation of such event, to receive, upon exercise of any Warrant, the number of shares of common stock of the successor or acquiring Person or of the Company, if it is the surviving corporation, and Other Property receivable upon or as a result

of such reorganization, reclassification, merger, consolidation, distribution or disposition of assets by a holder of the number of shares of Common Stock for which the Warrant is exercisable immediately prior to such event.

(c) *Entitlement to Participate.* Notwithstanding anything to the contrary in this Section 6.01, no adjustment to the Exercise Price shall be made with respect to any distribution or other transaction if Holders are entitled to participate in such distribution or transaction as if they held a number of shares of Common Stock issuable upon exercise of the Warrants immediately prior to such event, without having to exercise their Warrants.

(d) *Abandonment.* If the Company shall take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend or other distribution, and shall thereafter (and before the dividend or distribution has been paid or delivered to stockholders) abandon its plan to pay or deliver such dividend or distribution, then thereafter no adjustment in the Exercise Price then in effect shall be required by reason of the taking of such record.

(e) *Notice of Adjustment.* Whenever the Exercise Price is adjusted, the Company shall provide the notices required by Section 6.03 hereof.

(f) *When Issuance or Payment May Be Deferred.* In any case in which this Section 6.01 shall require that an adjustment in the Exercise Price be made effective as of a record date for a specified event, the Company may elect to defer until the occurrence of such event (i) issuing to the Holder of any Warrant exercised after such record date the Warrant Shares and other Capital Stock of the Company, if any, issuable upon such exercise over and above the Warrant Shares and other Capital Stock of the Company, if any, issuable upon such exercise on the basis of the Exercise Price and (ii) paying to such Holder any amount in cash in lieu of a fractional share pursuant to Section 6.02 hereof; provided that the Company shall deliver to such Holder a due bill or other appropriate instrument evidencing such Holder's right to receive such additional Warrant Shares, other Capital Stock and cash upon the occurrence of the event requiring such adjustment.

(g) *Form of Warrants.* Irrespective of any adjustments in the Exercise Price or the number or kind of shares purchasable upon the exercise of the Warrants, Warrants theretofore or thereafter issued in certificated form may continue to express the same price and number and kind of shares as are stated in the Warrants initially issuable pursuant to this Agreement.

Section 6.02 Fractional Interests. The Company shall not be required to issue fractional Warrant Shares or scrip representing fractional shares on the exercise of Warrants. If more than one Warrant shall be presented for exercise in full at the same time by the same Holder, the number of full Warrant Shares which shall be issuable upon the exercise thereof shall be computed on the basis of the aggregate number of Warrant Shares issuable on exercise of the Warrants so presented. If any fraction of a Warrant Share would, except for the provisions of this Section 6.02, be issuable on the exercise of any Warrants (or specified portion thereof), the Company may, at its option, either pay an amount in cash equal to the current Per Share Price per

Warrant Share, as determined on the date the Warrant is presented for exercise, multiplied by such fraction, computed to the nearest whole U.S. cent, or round the number of Warrant Shares issued up to the nearest number of whole Warrant Shares. The Company shall provide Computershare an initial funding of one thousand dollars ($1,000) for the purpose of issuing cash in lieu of fractional shares. From time to time thereafter, Computershare may request additional funding to cover fractional payments. Computershare shall have no obligation to make fractional payments unless the Company shall have provided the necessary funds to pay in full all amounts due and payable with respect thereto.

Section 6.03 Notices to Warrant Agent and Holders. (a) Upon any adjustment of the Exercise Price pursuant to Section 6.01 hereof, the Company shall promptly thereafter (i) cause to be filed with the Warrant Agent a certificate of the Chief Financial Officer of the Company setting forth the Exercise Price after such adjustment and setting forth in reasonable detail the method of calculation and the facts upon which such calculations are based and setting forth the number of Warrant Shares (or portion thereof) or other securities or property issuable after such adjustment in the Exercise Price, upon exercise of a Warrant, which certificate shall be conclusive for all purposes, and (ii) cause to be given to each of the Holders written notice of such adjustments by first-class mail, postage prepaid, or by any other manner described in Section 8.02, to the Holders' respective addresses set forth in the Register. Where appropriate, such notice may be given in advance and included as a part of the notice required to be mailed under the other provisions of this Section 6.03. The Warrant Agent shall have no obligation under this Agreement to determine whether an adjustment under Section 6.01 has occurred or to calculate any of the adjustments set forth herein.

(b) In case:

(i) the Company shall authorize the issuance to all holders of shares of Common Stock of rights, options or warrants to subscribe for or purchase shares of Common Stock or of any other subscription rights or warrants;

(ii) the Company shall authorize the distribution to all holders of shares of Common Stock of any additional shares of capital stock of the Company or securities convertible into or exchangeable for shares of capital stock of the Company (other than dividends or distributions referred to in Section 6.01(a) hereof);

(iii) of the voluntary or involuntary dissolution, liquidation or winding up of the Company;

then the Company shall cause to be filed with the Warrant Agent and shall cause to be given to each of the Holders, at least 10 days prior to any applicable record date, or promptly in the case of events for which there is no record date, by first-class mail, postage prepaid, or by any other manner described in Section 8.02, to the Holders' respective addresses set forth in the Register, a written notice stating (x) the date as of which the holders of record of shares of Common Stock to be entitled to receive any such rights, options, warrants or distribution are to be determined, or (y) the date on which any such consolidation, merger, conveyance, transfer, dissolution, liquidation or winding up is expected to become effective or consummated, and the date as of

which it is expected that holders of record of shares of Common Stock shall be entitled to exchange such shares for securities or other property, if any, deliverable in connection with any such event. The failure to give the notice required by this Section 6.03 or any defect therein shall not affect the legality or validity of any distribution, right, option, warrant, consolidation, merger, conveyance, transfer, dissolution, liquidation or winding up, or the vote upon any action.

Section 6.04 No Rights as Stockholders. Nothing contained in this Agreement or the Warrants shall be construed as conferring upon the holders of Warrants the right to vote or to consent or to receive notice as stockholders in respect of the meetings of stockholders or the election of directors of the Company or any other matter, or any rights whatsoever, including the right to receive dividends or other distributions, as stockholders of the Company, or the right to share in the assets of the Company in the event of its liquidation, dissolution or winding up, except in respect of Warrant Shares received following exercise of Warrants. In addition, nothing contained in this Agreement or the Warrants shall be construed as imposing any liabilities on the Holder as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company.

ARTICLE VII
WARRANT AGENT

Section 7.01 Warrant Agent. The Warrant Agent undertakes the express duties and obligations imposed by this Agreement upon the following terms and conditions (and no duties or obligations shall be inferred), by all of which the Company and the Holders of Warrants, by their acceptance thereof, shall be bound:

(a) The statements and recitals contained herein and in the Warrants shall be taken as statements of the Company and the Warrant Agent assumes no responsibility and shall not be liable for the correctness of any of the same (except its countersignature thereof). The Warrant Agent assumes no responsibility with respect to the distribution of the Warrants except as herein otherwise expressly provided.

(b) In the absence of bad faith, willful misconduct or gross negligence on its part (each as determined by a final judgment of a court of competent jurisdiction), the Warrant Agent shall not have any liability or be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof (except the due execution hereof by the Warrant Agent) or in respect of the validity or execution of any Warrant Certificate (except its countersignature thereof); nor shall it be responsible for any breach by the Company of any covenant or condition contained in this Agreement or in any Warrant Certificate; nor shall it be responsible for the adjustment of the Exercise Price or the making of any change in the number of shares of Common Stock required under the provisions of Article VI or responsible for the manner, method or amount of any such change or adjustment or the ascertaining of the existence of facts that would require any such adjustment or change; nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any shares of Common Stock to be issued pursuant to this Agreement or any Warrant Certificate or as to whether any Warrant Shares will, when issued, be duly authorized, validly issued, fully paid and nonassessable.

(c) Notwithstanding anything contained herein to the contrary, except in cases of willful misconduct or bad faith of the Warrant Agent (each as determined by a final judgment of a court of competent jurisdiction), the Warrant Agent's aggregate liability during any term of this Agreement with respect to, arising from, or arising in connection with this Agreement, or from all services provided or omitted to be provided under this Agreement, whether in contract, or in tort, or otherwise, is limited to, and shall not exceed, the amounts paid hereunder by the Company to Warrant Agent as fees and charges, but not including reimbursable expenses, during the twelve (12) months immediately preceding the event for which recovery from Warrant Agent is being sought. Anything to the contrary notwithstanding, in no event will the Warrant Agent be liable for special, punitive, indirect, incidental or consequential loss or damages of any kind whatsoever (including, without limitation, lost profits), even if the Warrant Agent has been advised of the likelihood of such loss or damages, and regardless of the form of action.

(d) The Warrant Agent is hereby authorized to accept instructions with respect to the performance of its duties hereunder from the Chief Executive Officer, Chief Financial Officer or any Vice President of the Company, and to apply to such officers for advice or instructions in connection with its duties, and it shall not be liable and shall be indemnified and held harmless for any action taken, suffered or omitted to be taken by it in the absence of bad faith and in accordance with instructions of any such officer. In the event the Warrant Agent believes any ambiguity or uncertainty exists hereunder or in any notice, instruction, direction, request or other communication, paper or document received by the Warrant Agent hereunder, the Warrant Agent, may, in its sole discretion, refrain from taking any action, and shall be fully protected and shall not be liable in any way to Company, the holder of any Warrant or any other Person for refraining from taking such action, unless the Warrant Agent receives written instructions signed by the Company which eliminates such ambiguity or uncertainty to the satisfaction of Warrant Agent, and which written instructions shall be deemed conclusive for all purposes.

(e) The Warrant Agent shall not be responsible for any failure of the Company to comply with any of the covenants contained in this Agreement or in the Warrants.

(f) The Warrant Agent may consult with legal counsel satisfactory to it, which may include counsel for the Company or an employee or counsel for the Warrant Agent, and the advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in accordance with the advice or opinion of such counsel.

(g) The Warrant Agent may act through its attorneys and agents and will not be responsible for the misconduct or negligence of any agent absent gross negligence, willful misconduct or bad faith (each as determined by a final judgment of a court of competent jurisdiction) in the appointment of such agent.

(h) In acting under this Warrant Agreement and in connection with the Warrant Certificates, the Warrant Agent is acting solely as agent of the Company as determined solely by the express provisions hereof (and no duties or obligations shall be inferred or implied), and does not assume any obligations or relationship of agency or trust for or with any of the

Holders of Warrant Certificates or beneficial owners of Warrants. No provision of this Agreement shall be construed to relieve the Warrant Agent from liability for its own willful misconduct or bad faith (each as determined by a final judgment of a court of competent jurisdiction).

(i) The Warrant Agent shall not have any duty or responsibility in the case of the receipt of any written demand from any Holder of Warrants with respect to any action or default by the Company, including, without limiting the generality of the foregoing, any duty or responsibility to initiate or attempt to initiate any proceedings at law or otherwise or to make any demand upon the Company.

(j) The Warrant Agent shall not be obligated to expend or risk its own funds or to take any action that it reasonably believes would expose or subject it to expense or liability or to a risk of incurring expense or liability, unless it has been furnished with assurances of repayment or indemnity reasonably satisfactory to it; provided, further, that the Warrant Agent may in any event resign pursuant to Section 7.04(i) instead of taking any such action.

(k) The Warrant Agent shall not be liable or responsible for any failure of the Company to comply with any of its obligations relating to any registration statement filed with the Commission or this Agreement, including, without limitation, obligations under applicable regulation or law.

(l) The Warrant Agent shall not be accountable or under any duty or responsibility for the use by the Company of any Warrants authenticated by the Warrant Agent and delivered by it to the Company pursuant to this Agreement or for the application by the Company of the proceeds of the issue and sale, or exercise, of the Warrants.

(m) The Warrant Agent shall be protected and shall incur no liability for or in respect of any action taken or omitted by it in reliance upon any Warrant Certificate, notice, direction, consent, certificate, affidavit, statement or other paper or document reasonably believed by it to be genuine and to have been presented or signed by the proper parties.

(n) The Warrant Agent shall have no liability for interest on any monies at any time received by it pursuant to any of the provisions of this Agreement or of the Warrant Certificates.

(o) A party requesting transfer of Warrants or the Warrant Shares must provide any evidence of authority that may be required by the Warrant Agent, including but not limited to, a signature guarantee from an eligible guarantor institution participating in a signature guarantee program approved by the Securities Transfer Association.

(p) The Company shall provide an Opinion of Counsel prior to the effective date of this Agreement to set up a reserve of Warrants and related Warrant Shares. The Opinion of Counsel shall state that all Warrants or Warrant Shares, as applicable, are: (1) registered under the Securities Act or are exempt from such registration, and all appropriate state securities law

filings have been made with respect to the warrants or shares; and (2) validly issued, fully paid and non-assessable.

(q) The Warrant Agent shall not have any obligation to verify or confirm the beneficial ownership of Common Stock or any other security of any Holder at any time, and it shall not have any responsibility or liability with respect to any limitations on exercise of the Warrants, including under Section 3.09(c) of this Agreement.

(r) The provisions of this Section 7.01, Section 7.02 and Section 7.03 will survive the termination of this Agreement, the exercise or expiration of the Warrants and the resignation, replacement or removal of the Warrant Agent.

Section 7.02 Compensation; Indemnity. (a) The Company will pay the Warrant Agent compensation for all services rendered by it hereunder as agreed upon in writing by the Company and the Warrant Agent. The Company will reimburse the Warrant Agent upon request for all reasonable and documented out-of-pocket expenses, disbursements and advances (including fees and expenses of counsel) incurred or made by the Warrant Agent in the preparation, delivery, negotiation, amendment, administration and execution of this Agreement and the exercise and performance of its duties hereunder, except any such expense, disbursement or advance attributable to its gross negligence, willful misconduct or bad faith (each as determined by a final nonappealable judgment of a court of competent jurisdiction).

(b) The Company will indemnify the Warrant Agent for, and hold it harmless against, any loss, liability or expense incurred (including without limitation, the reasonable fees and expenses of outside legal counsel) which may be paid, incurred or suffered by or to which it may become subject, arising from or out of, directly or indirectly, any claims or liability resulting from its actions or omissions as Warrant Agent pursuant hereto; provided, that such covenant and agreement does not extend to, and the Warrant Agent shall not be indemnified with respect to, such costs, expenses, losses and damages incurred or suffered by the Warrant Agent as a result of, or arising out of, its gross negligence, bad faith, or willful misconduct (each as determined by a final, nonappealable judgment of a court of competent jurisdiction). The costs and expenses incurred by the Warrant Agent in enforcing this right of indemnification shall be paid by the Company.

(c) To the extent the Company is not also a party to an action, proceeding, suit or claim against the Warrant Agent concerning this Agreement or the performance by the Warrant Agent of its duties hereunder, the Warrant Agent shall as promptly as practicable notify the Company in accordance with Section 8.02 of the assertion of an action, proceeding, suit or claim against the Warrant Agent, after the Warrant Agent has actual notice of such assertion of an action, proceeding, suit or claim or has been served with the summons or other first legal process giving information as to the nature and basis of the action, proceeding, suit or claim; provided that the failure to provide such notice shall not affect the rights of the Warrant Agent hereunder, except to the extent a court of competent jurisdiction determines that such failure actually prejudiced the Company.

Section 7.03 Individual Rights of Warrant Agent. The Warrant Agent, and any stockholder, director, officer, Affiliate, agent, representative or employee of it, may buy, sell or deal in any of the Warrants or other securities of the Company or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though it were not Warrant Agent under this Agreement. Nothing herein shall preclude the Warrant Agent from acting in any other capacity for the Company or for any other legal entity. An Agent may do the same with like rights.

Section 7.04 Replacement of Warrant Agent. (a) The Warrant Agent

(i) may resign and be discharged from its duties under this Agreement at any time by not less than 30 days' prior written notice to the Company (pursuant to Section 8.02),

(ii) may be removed at any time by the Company by 30 days' prior written notice to the Warrant Agent, and

(iii) may be removed by the Company if: (A) the Warrant Agent is adjudged a bankrupt or an insolvent; (B) a receiver or other public officer takes charge of the Warrant Agent or its property; or (C) the Warrant Agent becomes incapable of acting in its capacity set forth in this Agreement.

In the event the transfer agency relationship in effect between the Company and the Warrant Agent terminates, the Warrant Agent will be deemed to have resigned automatically and be discharged from its duties under this Agreement as of the effective date of such termination.

(b) If the Warrant Agent resigns or is removed, or if a vacancy exists in the office of Warrant Agent for any reason, the Company will promptly appoint a successor Warrant Agent. If the successor Warrant Agent does not deliver its written acceptance within 30 days after the retiring Warrant Agent resigns or is removed, the retiring Warrant Agent, the Company or the Holders of a majority of the outstanding Warrants may petition any court of competent jurisdiction for the appointment of a successor Warrant Agent.

(c) Upon delivery by the successor Warrant Agent of a written acceptance of its appointment to the retiring Warrant Agent and to the Company, (i) the retiring Warrant Agent will transfer all property held by it as Warrant Agent to the successor Warrant Agent (but such predecessor Warrant Agent shall not be required to make any additional expenditure or assume any additional liability in connection with the foregoing), (ii) the resignation or removal of the retiring Warrant Agent will become effective, and (iii) the successor Warrant Agent will have all the rights, powers and duties of the Warrant Agent under this Agreement. Upon request of any successor Warrant Agent, the Company will execute any and all instruments for fully vesting in and confirming to the successor Warrant Agent all such rights and powers. The Company will give notice of any resignation and any removal of the Warrant Agent, and the transfer agent, as the case may be, and each appointment of a successor Warrant Agent to all Holders, and include

in the notice the name of the successor Warrant Agent and the address of its Corporate Trust Office.

(d) Notwithstanding replacement of the Warrant Agent pursuant to this Section, the Company's obligations under Section 7.01, Section 7.02 and Section 7.03 will continue for the benefit of the retiring Warrant Agent.

Section 7.05 Successor Warrant Agent by Merger. (a) If the Warrant Agent consolidates with, merges or converts into, or transfers all or substantially all of its shareholder services business to, another Person or national banking association, the resulting, surviving or transferee Person or national banking association without any further act will be the successor Warrant Agent with the same effect as if the successor Warrant Agent had been named as the Warrant Agent in this Agreement.

(b) If, at the time such successor to the Warrant Agent shall succeed to the agency created by this Agreement, any of the Warrants have been countersigned but not delivered, the successor Warrant Agent may adopt the countersignature of the original Warrant Agent; and if any of the Warrants shall not have been countersigned, the successor Warrant Agent may countersign such Warrants, and in all such cases such Warrants shall have the full force and effect provided in the Warrants and in this Agreement.

Section 7.06 Holder Lists. The Warrant Agent shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders. If the Warrant Agent is not the Registrar, the Company shall promptly furnish to the Warrant Agent at such times as the Warrant Agent may request in writing, a list in such form and as of such date as the Warrant Agent may reasonably require of the names and addresses of the Holders.

ARTICLE VIII
MISCELLANEOUS

Section 8.01 Holder Actions. (a) Any notice, consent to amendment, supplement or waiver provided by this Agreement to be given by a Holder (an "act") may be evidenced by an instrument signed by the Holder delivered to the Warrant Agent in accordance with Section 8.02.

(b) Any act by the Holder of any Warrant binds that Holder and every subsequent Holder of such Warrant, even if no notation thereof appears on the Warrant Certificate.

(c) The Company may, but is not obligated to, fix a record date for the purpose of determining the Holders entitled to act with respect to any amendment or waiver or in any other regard. If a record date is fixed, those Persons that were Holders at such record date and only those Persons will be entitled to act, or to revoke any previous act, whether or not those Persons continue to be Holders after the record date. No act will be valid or effective for more

than 90 days after the record date. The Company shall give the Warrant Agent prompt notice of its fixing of any record date in connection with this Agreement or the Warrants.

Section 8.02 Notices. (a) Any notice or communication by the Company, on the one hand, or the Warrant Agent, on the other hand, to the other is duly given if in writing (i) when delivered in person, (ii) on the fourth Business Day following mailing when mailed by first class mail, postage prepaid, (iii) on the first Business Day following the deposit thereof with the courier, when sent by overnight delivery by a nationally recognized courier service, or (iv) when receipt has been acknowledged when sent via email (if a notice email address is provided). In each case the notice or communication should be addressed as follows:

If to the Company:

SM Energy Company
1775 Sherman Street, Suite 1200
Denver, Colorado 80203
Attn: David Copeland, Executive Vice President and General Counsel
Email: dcopeland@sm-energy.com

with a copy (which shall not constitute notice) to:

Latham & Watkins LLP
811 Main Street, Suite 3700
Houston, Texas 77002
Attention: David J. Miller; Trevor J. Lavelle
Email: david.miller@lw.com; trevor.lavelle@lw.com

and:

Holland & Hart LLP
555 Seventeenth Street, Suite 3200
Denver, Colorado 80202
Attention: Lucy Stark
Email: mlstark@hollandhart.com

If to the Warrant Agent:

Computershare Trust Company N.A.
150 Royall Street
Canton, MA 02021
Attention: Client Services

The Company or the Warrant Agent by notice to the other may designate additional or different addresses for subsequent notices or communications.

Any notice or communication by a Holder to the Warrant Agent or the Company shall be given in accordance with this Section 8.02(a).

(b) Except as otherwise expressly provided with respect to published notices, any notice or communication to a Holder will be deemed given (i) five days after mailing when mailed to the Holder at its address as it appears on the Register by first class mail; provided that if the Company has been made aware of a different address pursuant to an applicable Warrant, the Company shall provide such notice to such address instead; provided, further, that Warrant Agent shall not be responsible for any addresses other than those appearing on the Register, (ii) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient, or (iii) as to any Global Warrant registered in the name of DTC or its nominee, as agreed by the Warrant Agent and DTC. Copies of any notice or communication to a Holder, if given by the Company, will be mailed to the Warrant Agent at the same time. Defect in mailing a notice or communication to any particular Holder will not affect its sufficiency with respect to other Holders.

(c) Where this Agreement provides for notice, the notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and the waiver will be the equivalent of the notice. Waivers of notice by Holders must be filed with the Warrant Agent, but such filing is not a condition precedent to the validity of any action taken in reliance upon such waivers.

Section 8.03 Supplements and Amendments. (a) The Company and the Warrant Agent may amend or supplement this Agreement or the Warrants without notice to or the consent of any Holder:

(i) to cure any ambiguity, omission, inconsistency or mistake in this Agreement or the Warrants;

(ii) to evidence and provide for the acceptance of an appointment hereunder by a successor Warrant Agent; or

(iii) to make any other change that does not adversely affect the rights of any Holder.

(b) Except as otherwise provided in paragraphs (a) or (c), this Agreement and the Warrants may be amended only by means of a written amendment signed by the Company, the Warrant Agent and the Holders of a majority of the outstanding Warrants. Any amendment or modification of or supplement to this Agreement or the Warrants, any waiver of any provision of this Agreement, and any consent to any departure by the Company or any purchaser from the terms of any provision of this Agreement shall be effective only in the specific instance and for the specific purpose for which such amendment, supplement, modification, waiver or consent has been made or given; provided, that the Holders of a majority of the outstanding Warrants by written notice to the Warrant Agent may waive future compliance by the Company with any

provision of this Agreement or the Warrants. In addition, any term of a specific Warrant may be amended or waived with the written consent of the Company and the Holder of such Warrant.

(c) Notwithstanding the provisions of paragraph (b), without the consent of each Holder affected, an amendment or waiver may not:

(i) increase the Exercise Price;

(ii) reduce the term of the Warrants; or

(iii) decrease the number of shares of Common Stock, cash or other securities or property issuable upon exercise of the Warrants

except, in each case, for adjustments provided for in this Agreement.

(d) It is not necessary for Holders to approve the particular form of any proposed amendment, supplement or waiver if their consent approves the substance thereof.

(e) Subject to Section 8.03(h), an amendment, supplement or waiver under this Section 8.03(e) will become effective on receipt by the Warrant Agent of written consents from the Holders of the requisite percentage of the outstanding Warrants. After an amendment, supplement or waiver under this Section 8.03(e) becomes effective, the Company will send to the Holders affected thereby a notice describing the amendment, supplement or waiver in reasonable detail. Any failure of the Company to send such notice, or any defect therein, will not, however, in any way impair or affect the validity of any such supplemental indenture or waiver.

(f) After an amendment, supplement or waiver becomes effective, it will bind every Holder unless it is of the type requiring the consent of each Holder affected. If the amendment, supplement or waiver is of the type requiring the consent of each Holder affected, the amendment, supplement or waiver will bind each Holder that has consented to it and every subsequent Holder of a Warrant with respect to which consent was granted.

(g) If an amendment, supplement or waiver changes the terms of a Warrant, the Company or the Warrant Agent may require the Holder to deliver it to the Warrant Agent so that the Warrant Agent may place an appropriate notation of the changed terms on the Warrant and return it to the Holder, or exchange it for a new Warrant that reflects the changed terms. The Warrant Agent may also place an appropriate notation on any Warrant thereafter countersigned. However, the effectiveness of the amendment, supplement or waiver is not affected by any failure to annotate or exchange Warrants in this fashion.

(h) The Warrant Agent is entitled to receive, and will be fully protected in relying upon, an Opinion of Counsel stating that the execution of any amendment, supplement or waiver authorized pursuant to this Section 8.03 is authorized or permitted by this Agreement. If the Warrant Agent has received such an Opinion of Counsel, it shall sign the amendment, supplement or waiver so long as the same does not adversely affect the rights of the Warrant Agent. Notwithstanding anything contained in this Agreement, the Warrant Agent may, but is

not obligated to, execute any amendment, supplement or waiver that affects the Warrant Agent's own rights, duties or immunities under this Agreement. No supplement or amendment to this Agreement shall be effective unless duly executed by the Warrant Agent.

Section 8.04 Governing Law; Jurisdiction; Waiver of Jury Trial.

(a) This Agreement, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement, shall be governed by the laws of the State of New York, without regard to the principles of conflicts of laws.

(b) The Company and each Holder of a Warrant (but not the Warrant Agent) hereby irrevocably and unconditionally agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby, whether in contract, tort or otherwise, shall exclusively be brought in the courts of the State of New York sitting in the Borough of Manhattan, City of New York, or of the United States for the South District of such state. The Company and each of the Holders hereby irrevocably consent to the exclusive jurisdiction of such courts in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient form. With respect to the Company and the Holders, service of process, summons, notice or other document by registered mail to the address set forth in Section 7.02 shall be effective service of process for any suit, action or other proceeding brought in any such court.

(c) **THE COMPANY THE WARRANT AGENT AND EACH HOLDER OF A WARRANT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE THEIR RIGHT TO TRIAL BY JURY IN ANY JUDICIAL PROCEEDING IN ANY COURT RELATING TO ANY DISPUTE, CONTROVERSY OR CLAIM WITH RESPECT TO THIS AGREEMENT.**

Section 8.05 No Adverse Interpretation of Other Agreements. This Agreement may not be used to interpret another agreement of the Company, and no such agreement may be used to interpret this Agreement.

Section 8.06 Successors and Assigns. All agreements of the Company in this Agreement and the Warrants will bind its successors and assigns. All agreements of the Warrant Agent in this Agreement will bind its successors and assigns. Subject to the transfer conditions referred to in any legend in effect as set forth herein and Section 3.08 and Section 3.09, each Holder may freely assign its Warrants and its rights under this Agreement, in whole or in part, to any Person.

Section 8.07 Duplicate Originals. The parties may sign any number of copies of this Agreement. Each signed copy shall be deemed an original, but all of them together represent the same agreement. A signature to this agreement executed/transmitted electronically will have the same authority, effect and enforceability as an original signature.

Section 8.08 Separability. In case any provision in this Agreement or in the Warrants is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby; provided, however, that if such prohibited and invalid provision shall adversely affect the rights, immunities, liabilities, duties or obligations of the Warrant Agent, the Warrant Agent shall be entitled to resign immediately upon written notice to the Company.

Section 8.09 Table of Contents and Headings. The Table of Contents and headings of the Articles and Sections of this Agreement have been inserted for convenience of reference only, are not to be considered a part of this Agreement and in no way modify or restrict any of the terms and provisions of this Agreement.

Section 8.10 Benefits of This Agreement. Nothing in this Agreement shall be construed to give to any Person other than the Company, the Warrant Agent and the registered holders of Warrants any legal or equitable right, remedy or claim under this Agreement; but this Agreement shall be for the sole and exclusive benefit of the Company, the Warrant Agent and the registered holders of Warrants.

Section 8.11 Obligations Limited to Parties to Agreement. Each of the parties hereto covenants, agrees and acknowledges that, other than as set forth herein, no Person other than the Warrant Agent, the Holders, their respective permitted assignees and the Company shall have any obligation hereunder and that, notwithstanding that one or more of such Persons may be a corporation, partnership or limited liability company, no recourse under this Agreement or under any documents or instruments delivered in connection herewith shall be had against any former, current or future director, officer, employee, agent, general or limited partner, manager, member, stockholder or Affiliate of any of such Persons or their respective permitted assignees, or any former, current or future director, officer, employee, agent, general or limited partner, manager, member, stockholder or Affiliate of any of the foregoing, whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any applicable law, it being expressly agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on or otherwise be incurred by any former, current or future director, officer, employee, agent, general or limited partner, manager, member, stockholder or Affiliate of any of such Persons or any of their respective assignees, or any former, current or future director, officer, employee, agent, general or limited partner, manager, member, stockholder or Affiliate of any of the foregoing, as such, for any obligations of such Persons or their respective permitted assignees under this Agreement or any documents or instruments delivered in connection herewith or for any claim based on, in respect of or by reason of such obligation or its creation, except, in each case, for any assignee of any Holder hereunder.

Section 8.12 Bank Accounts. All funds received by Computershare under this Agreement that are to be distributed or applied by Computershare in the performance of Services (the "Funds") shall be held by Computershare as agent for the Company and deposited in one or more bank accounts to be maintained by Computershare in its name as agent for the Company. Until paid pursuant to the terms of this Agreement, Computershare will hold the Funds through such accounts in: deposit accounts of commercial banks with Tier 1 capital exceeding $1 billion

or with an average rating above investment grade by S&P (LT Local Issuer Credit Rating), Moody's (Long Term Rating) and Fitch Ratings, Inc. (LT Issuer Default Rating) (each as reported by Bloomberg Finance L.P.). Computershare shall have no responsibility or liability for any diminution of the Funds that may result from any deposit made by Computershare in accordance with this paragraph, including any losses resulting from a default by any bank, financial institution or other third party. Computershare may from time to time receive interest, dividends or other earnings in connection with such deposits. Computershare shall not be obligated to pay such interest, dividends or earnings to the Company, any holder or any other party.

Section 8.13 Further Assurances. The Company shall perform, acknowledge and deliver or cause to be performed, acknowledged and delivered all such further and other acts, documents, instruments and assurances as may be reasonably required by the Warrant Agent for the carrying out or performing by the Warrant Agent of the provisions of this Agreement.

Section 8.14 Confidentiality. The Warrant Agent and the Company agree that all books, records, information and data pertaining to the business of the other party, including but not limited to, personal, non-public Holder information, which are exchanged or received pursuant to the negotiation or the carrying out of this Agreement including the fees for services agreed upon by the parties hereto shall remain confidential, and shall not be voluntarily disclosed to any other Person, except as may be required by law or regulation, including, without limitation, pursuant to subpoenas from state or federal government authorities (*e.g.*, in divorce and criminal actions).

Section 8.15 Force Majeure. Notwithstanding anything to the contrary contained herein, the Warrant Agent will not be liable for any delays or failures in performance resulting from acts beyond its reasonable control including, without limitation, acts of God, terrorist acts, epidemics, pandemics, shortage of supply, breakdowns or malfunctions, interruptions or malfunction of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties, war, or civil unrest.

IN WITNESS WHEREOF, the parties hereto have caused this Warrant Agreement to be duly executed, as of the day and year first above written.

SM ENERGY COMPANY

By: /s/ David W. Copeland
Name: David W. Copeland
Title: Executive Vice President, General Counsel and Corporate Secretary

COMPUTERSHARE, INC. COMPUTERSHARE TRUST COMPANY, N.A.,
as Warrant Agent

By: /s/ Collin Ekeogu
Name: Collin Ekeogu
Title: Manager, Corporate Actions

[*Signature Page to Warrant Agreement*]

EXHIBIT A

[Face of Warrant]

[Insert appropriate legend]

No. Warrants CUSIP No. [___]

Warrant Certificate

This Warrant Certificate certifies that _____, or its registered assigns, is the registered holder of [_____] Warrants (the "Warrants" and each, a "Warrant"), exercisable for shares of common stock, par value $0.01 per share (the "Common Stock"), of SM Energy Company, a Delaware corporation (the "Company"). Each Warrant is initially exercisable for one fully paid and nonassessable share of Common Stock. Each Warrant entitles the registered holder upon exercise at any time during the period from and after the Triggering Date (as such term is defined on the reverse hereof), until 5:00 p.m., New York City time, on June 30, 2023 (the "Expiration Time"), to receive from the Company an amount of fully paid and nonassessable shares of Common Stock (the "Warrant Shares") at an exercise price (the "Exercise Price") of $0.01 per Warrant Share, subject to the conditions and terms set forth herein and in the Warrant Agreement referred to on the reverse hereof. The Exercise Price and the number of Warrant Shares issuable upon exercise of the Warrants are subject to adjustment upon the occurrence of certain events set forth in the Warrant Agreement.

Reference is hereby made to the further provisions of this Warrant Certificate set forth on the reverse hereof and such further provisions shall for all purposes have the same effect as though fully set forth at this place.

IN WITNESS WHEREOF, the Company has caused this Warrant Certificate to be signed below by its duly authorized officer.

Dated: [_____]

SM ENERGY COMPANY

By: _
Name:
Title:

Countersigned on [_____]:
COMPUTERSHARE, INC.

COMPUTERSHARE TRUST COMPANY, N.A., as Warrant Agent

By: _
Authorized Signatory

SM ENERGY COMPANY

[Reverse of Warrant]

1. Warrant Agreement

The Warrants evidenced by this Warrant Certificate are part of a duly authorized issue of Warrants issued or to be issued pursuant to a Warrant Agreement, dated as of June 17, 2020 (the "Warrant Agreement"), between the Company and Computershare, Inc. and Computershare Trust Company, N.A., collectively as warrant agent (or any successor warrant agent) (the "Warrant Agent"), which Warrant Agreement is hereby incorporated by reference in and made a part of this instrument and is hereby referred to for a description of the rights, limitation of rights, obligations, duties and immunities thereunder of the Warrant Agent, the Company and the holders (the words "holders" or "holder" meaning the registered holders or registered holder) of the Warrants. To the extent permitted by law, in the event of an inconsistency or conflict between the terms of this Warrant and the Warrant Agreement, the terms of the Warrant Agreement will prevail.

2. Exercise

Warrants may be exercised at any time from and after the Triggering Date, until 5:00 p.m., New York City time, on June 30, 2023.

As used herein, "Triggering Date" shall mean the first Trading Day following five consecutive Trading Days on which the product of the number of shares of Common Stock issued and outstanding on four of the five Trading Days multiplied by the closing price per share of Common Stock for each such Trading Day exceeds $1 billion.

In order to exercise all or any of the Warrants represented by this Warrant Certificate, the holder must deliver to the Warrant Agent at its Corporate Trust Office set forth in the Warrant Agreement this Warrant Certificate and the form of election to exercise on the reverse hereof duly completed.

The exercise of Warrants is subject to certain restrictions on exercise as described in the Warrant Agreement.

No Warrant may be exercised after the Expiration Time, and to the extent not exercised by such time the Warrants shall become void.

3. Adjustments

The Warrant Agreement provides that, upon the occurrence of certain events, the Exercise Price and, if applicable, the number of shares of Common Stock issuable upon the exercise of each Warrant shall be adjusted.

4. No Fractional Shares

The Company shall not be required to issue fractional Warrant Shares or scrip representing fractional shares on the exercise of Warrants. In the event that a fraction of a Warrant Share would be issuable on the exercise of any Warrants (or specified portion thereof), the Company may, at its option, either pay the cash value thereof determined as provided in the Warrant Agreement or round any fraction up to the nearest number of whole Warrant Shares.

5. Registered Form; Transfer and Exchange

The Warrants have been issued in registered form. Warrant Certificates, when surrendered at the office or offices of the Registrar designated for such purpose, with evidence of authority or other documentation that may be required by the Warrant Agent (including, but not limited to, a signature guarantee from an eligible guarantor institution participating in a signature guarantee program approved by the Securities Transfer Association, and an opinion of counsel satisfactory to the Warrant Agent), by the registered holder thereof in person or by legal representative or attorney duly authorized in writing, may be exchanged, in the manner and subject to the limitations provided in the Warrant Agreement, but without payment of any service charge (except as specified in the Warrant Agreement), for another Warrant Certificate or Warrant Certificate of like tenor evidencing in the aggregate a like number of Warrants.

Upon due presentation for registration of transfer of this Warrant Certificate at the office of the Registrar a new Warrant Certificate or Warrant Certificate of like tenor and evidencing in the aggregate a like number of Warrants shall be issued to the transferee(s) in exchange for this Warrant Certificate, subject to the limitations provided in the Warrant Agreement, without charge except for any tax or other governmental charge imposed in connection therewith.

The Company and the Warrant Agent may deem and treat the registered holder(s) thereof as the absolute owner(s) of this Warrant Certificate (notwithstanding any notation of ownership or other writing hereon made by anyone), for the purpose of any exercise hereof, of any distribution to the holder(s) hereof, and for all other purposes, and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary. This Warrant Certificate does not entitle any holder hereof to any rights of a stockholder of the Company.

6. Countersignature

This Warrant Certificate shall not be valid unless countersigned by the Warrant Agent, in manual or facsimile form.

7. Governing Law

This Warrant, and any disputes, actions, claims or causes of action arising out of or in connection with this Warrant, shall be governed by the laws of the State of New York, without regard to the principles of conflicts of laws.

A copy of the Warrant Agreement may be obtained by the holder hereof upon written request to the Company.

[Form of Exercise Notice]

(To Be Executed Upon Exercise of Warrant)

Date: _____, 20___

The undersigned hereby elects irrevocably to exercise the right, represented by this Warrant Certificate and pursuant to the procedures set forth in the Warrant Agreement, to receive _____ shares of common stock, par value $0.01 per share (the "**Shares**"), of SM Energy Company, a Delaware corporation (the "**Company**"), and hereby [*check one*]:

☐ elects a Cash Exercise and makes payment of $_____ (at the rate of $____ per Share) in payment of the Exercise Price pursuant thereto; or

☐ elects a Cashless Exercise to convert its right to purchase _____ Shares of the Company under the Warrant Agreement for _____ Shares, in accordance with the formula for Cashless Exercise set forth in the Warrant Agreement.

[This exercise is made in connection with [*insert relevant public offering or sale of the Company]* and is conditioned upon consummation of such transaction. The exercise shall not be deemed to be effective until immediately prior to the consummation of such transaction.]

If said number of shares is less than all of the shares of Common Stock issuable hereunder, the undersigned requests that a new Warrant representing the remaining balance of such shares be registered in the name of_____, whose address is_____, and that such Warrant be delivered to _____, whose address is _____.

[*The following paragraph to be included to the extent reasonably requested by the Company*] [The undersigned represents and warrants that (x) it is a qualified institutional buyer (as defined in Rule 144A) and is receiving the Warrant Shares for its own account or for the account of another qualified institutional buyer, and it is aware that the Company is issuing the Warrant Shares to it in reliance on Rule 144A; (y) it is an "accredited investor" within the meaning of Rule 501 under the Securities Act; or (z) it is receiving the Warrant Shares pursuant to another available exemption from the registration requirements of the Securities Act. Prior to receiving Warrant Shares pursuant to clause (x) above, the Company and the Warrant Agent may request a certificate substantially in the form of Exhibit C to the Warrant Agreement. Prior to receiving Warrant Shares pursuant to clause (y) above, the Company and the Warrant Agent may request a certificate substantially in the form of Exhibit D and/or an opinion of counsel. Prior to receiving Warrant Shares pursuant to clause (z) above the Company and the Warrant Agent may request appropriate certificates and/or an opinion of counsel.]

_____
Signature
Date: _

_____
Signature Guaranteed

[FORM OF TRANSFER NOTICE]

(To Be Executed Upon Exercise of Warrant)

FOR VALUE RECEIVED the undersigned registered holder hereby sell(s), assign(s) and transfer(s) unto _____ (the "Assignee")

(Please type or print block letters)(Please print or typewrite name and address including zip code of assignee)

the within Warrant and all rights thereunder (the "Securities"), hereby irrevocably constituting and appointing attorney to transfer said Warrant Certificate on the books of the Company with full power of substitution in the premises.

[THE FOLLOWING PROVISION TO BE INCLUDED ON ALL CERTIFICATES BEARING A RESTRICTED LEGEND]

In connection with any transfer of this Warrant Certificate occurring prior to the removal of the Restricted Legend, the undersigned confirms (i) the understanding that the Securities have not been registered under the Securities Act of 1933, as amended; (ii) that such transfer is made without utilizing any general solicitation or general advertising; and (iii) further as follows:

Check One

☐ (1) This Warrant Certificate is being transferred to a "qualified institutional buyer" in compliance with Rule 144A under the Securities Act of 1933, as amended, and certification in the form of Exhibit C to the Warrant Agreement is being furnished herewith.

or

☐ (2) This Warrant Certificate is being transferred other than in accordance with (1) above and documents are being furnished which comply with the conditions of transfer set forth in this Warrant and the Warrant Agreement.

If none of the foregoing boxes is checked, the Warrant Agent is not obligated to register this Warrant in the name of any Person other than the Holder hereof unless and until the conditions to any such transfer of registration set forth herein and in the Warrant Agreement have been satisfied.

Date: _

Seller _

By: _

NOTICE: The signature to this assignment must correspond with the name as written upon the face of the within-mentioned instrument in every particular, without alteration or any change whatsoever.

_____
Signature Guaranteed

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Warrant Agent, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Warrant Agent in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

Schedule A

(To be attached to Global Warrant Certificate)

SCHEDULE OF INCREASES OR DECREASES IN GLOBAL WARRANTS

The initial Number of Global Warrants is 5,941,304. In accordance with the Warrant Agreement dated as of June 17, 2020 among the Company and Computershare, Inc. and Computershare Trust Company, N.A., collectively as Warrant Agent (or any successor warrant agent), the following increases or decreases in the Number of Global Warrants have been made:

Date	Amount of increase in Number of Global Warrants evidenced by this Global Warrant	Amount of decrease in Number of Global Warrants evidenced by this Global Warrant	Number of Global Warrants evidenced by this Global Warrant following such decrease or increase	Signature of authorized signatory

EXHIBIT B-1

DTC LEGEND

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS A BENEFICIAL INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL WARRANT ARE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF CEDE & CO. OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL WARRANT ARE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE TRANSFER PROVISIONS OF THE WARRANT AGREEMENT.

EXHIBIT B-2

RESTRICTED LEGEND

THIS WARRANT AND THE UNDERLYING COMMON STOCK THAT MAY BE ISSUED UPON ITS EXERCISE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY 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.

THIS WARRANT EVIDENCES AND ENTITLES THE REGISTERED HOLDER HEREOF TO CERTAIN RIGHTS AS SET FORTH IN THE WARRANT AGREEMENT BETWEEN SM ENERGY COMPANY AND COMPUTERSHARE INC. AND COMPUTERSHARE TRUST COMPANY, N.A., COLLECTIVELY AS WARRANT AGENT (OR ANY SUCCESSOR WARRANT AGENT), DATED AS OF JUNE 17, 2020, AS IT MAY FROM TIME TO TIME BE SUPPLEMENTED OR AMENDED, THE TERMS OF WHICH ARE HEREBY INCORPORATED HEREIN BY REFERENCE AND A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICES OF THE COMPANY. THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) OR (B) IT IS AN "ACCREDITED INVESTOR" WITHIN THE MEANING OF RULE 501 UNDER THE SECURITIES ACT AND (2) AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH WARRANT AND THE UNDERLYING COMMON STOCK THAT MAY BE ISSUED UPON ITS EXERCISE, PRIOR TO THE EXPIRATION OF THE APPLICABLE HOLDING PERIOD WITH RESPECT TO RESTRICTED SECURITIES SET FORTH IN RULE 144 UNDER THE SECURITIES ACT, ONLY (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHICH NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) TO AN "ACCREDITED INVESTOR" WITHIN THE MEANING OF RULE 501 UNDER THE SECURITIES ACT THAT IS ACQUIRING THE SECURITY FOR ITS OWN ACCOUNT, OR FOR THE ACCOUNT OF SUCH AN ACCREDITED INVESTOR, FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO, OR FOR OFFER OR SALE IN CONNECTION WITH, ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, (D) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, OR (E) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE COMPANY'S AND THE WARRANT AGENT'S (INCLUDING ANY SUCCESSOR WARRANT AGENT) RIGHT PRIOR TO ANY

SUCH OFFER, SALE OR TRANSFER TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO THE WARRANT AGENT, AND IN EACH OF THE FOREGOING CASES, A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS SECURITY IS COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE WARRANT AGENT. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE EXPIRATION OF THE APPLICABLE HOLDING PERIOD WITH RESPECT TO RESTRICTED SECURITIES SET FORTH IN RULE 144 UNDER THE SECURITIES ACT, SUBJECT TO THE RIGHT OF THE WARRANT AGENT TO REQUEST AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO IT.

EXHIBIT C

Rule 144A Certificate

_____, _____

[_____]
[_____]
Attention: [_____]

Re: Warrants to acquire Common Stock of SM Energy Company (the "Warrants") Issued under the Warrant Agreement (the "Agreement") dated as of June 17, 2020 relating to the Warrants

Ladies and Gentlemen:

This Certificate relates to:

[CHECK A OR B AS APPLICABLE.]

☐ A. Our proposed purchase of Warrants issued under the Agreement.

☐ B. Our proposed exchange of Warrants issued under the Agreement for an equal number of Warrants to be held by us.

We and, if applicable, each account for which we are acting, in the aggregate owned and invested more than $100,000,000 in securities of issuers that are not affiliated with us (or such accounts, if applicable), as of _____, 20__, which is a date on or since close of our most recent fiscal year. We and, if applicable, each account for which we are acting, are a qualified institutional buyer within the meaning of Rule 144A ("Rule 144A") under the Securities Act of 1933, as amended (the "Securities Act"). If we are acting on behalf of an account, we exercise sole investment discretion with respect to such account. We are aware that the transfer of Warrants to us, or such exchange, as applicable, is being made in reliance upon the exemption from the provisions of Section 5 of the Securities Act provided by Rule 144A. Prior to the date of this Certificate we have received such information regarding the Company as we have requested pursuant to Rule 144A(d)(4) or have determined not to request such information.

You and the Company are entitled to rely upon this Certificate and are irrevocably authorized to produce this Certificate or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

Very truly yours,

[NAME OF PURCHASER (FOR TRANSFERS) OR OWNER (FOR EXCHANGES)]

By: _

Name: _

Title: _

Address: _

Date: _

EXHIBIT D

Accredited Investor Certificate

_____, _____

[_____]
[_____]
Attention: [_____]

Re: Warrants to acquire Common Stock of SM Energy Company (the "Warrants") Issued under the Warrant Agreement (the "Agreement") dated as of June 17, 2020 relating to the Warrants

Ladies and Gentlemen:

This Certificate relates to:

[CHECK A OR B AS APPLICABLE.]

☐ A. Our proposed purchase of Warrants issued under the Agreement.

☐ B. Our proposed exchange of Warrants issued under the Agreement for an equal number of Warrants to be held by us.

We hereby confirm that:

1. We are an "accredited investor" (an "Accredited Investor") within the meaning of Rule 501 under the Securities Act of 1933, as amended (the "Securities Act").

2. Any acquisition of Warrants by us will be for our own account or for the account of one or more other Accredited Investors as to which we exercise sole investment discretion.

3. We have such knowledge and experience in financial and business matters that we are capable of evaluating the merits and risks of an investment in the Warrants and we and any accounts for which we are acting are able to bear the economic risks of and an entire loss of our or their investment in the Warrants.

4. We are not acquiring the Warrants with a view to any distribution thereof in a transaction that would violate the Securities Act or the securities laws of any State of the United States or any other applicable jurisdiction; provided that the disposition of our property and the property of any accounts for which we are acting as fiduciary will remain at all times within our and their control.

5. We acknowledge that the Warrants have not been registered under the Securities Act and that the Warrants may not be offered or sold within the United States or to or for the benefit of U.S. persons except as set forth below.

We agree for the benefit of the Company, on our own behalf and on behalf of each account for which we are acting, that such Warrants may be offered, sold, pledged or otherwise transferred only in accordance with the Securities Act and any applicable securities laws of any State of the United States and only (a) to the Company or any Subsidiary thereof, (b) pursuant to a registration statement that has been declared effective under the Securities Act, (c) to a person it reasonably believes is a qualified institutional buyer in compliance with Rule 144A under the Securities Act, (d) to an Accredited Investor that, prior to such transfer, delivers to the Warrant Agent a duly completed and signed certificate (the form of which may be obtained from the Warrant Agent) relating to the restrictions on transfer of the Warrants, or (e) pursuant to any other available exemption from the registration requirements of the Securities Act.

Prior to the registration of any transfer in accordance with (c) above, we acknowledge that a duly completed and signed certificate (the form of which may be obtained from the Warrant Agent) must be delivered to the Warrant Agent. Prior to the registration of any transfer, we acknowledge that the Company and the Warrant Agent reserve the right to require the delivery of such legal opinions, certifications or other evidence as may reasonably be required in order to determine that the proposed transfer is being made in compliance with the Securities Act and applicable state securities laws. We acknowledge that no representation is made as to the availability of any exemption from the registration requirements of the Securities Act.

We understand that the Warrant Agent will not be required to accept for registration of transfer any Warrants acquired by us, except upon presentation of evidence satisfactory to the Company and the Warrant Agent that the foregoing restrictions on transfer have been complied with. We further understand that the Warrants acquired by us will bear a legend reflecting the substance of the preceding paragraph. We further agree to provide to any person acquiring any of the Warrants from us a notice advising such person that resales of the Warrants are restricted as stated herein and that the Warrants will bear a legend to that effect.

We agree to notify you promptly in writing if any of our acknowledgments, representations or agreements herein ceases to be accurate and complete.

We represent to you that we have full power to make the foregoing acknowledgments, representations and agreements on our own behalf and on behalf of any account for which we are acting.

You and the Company are entitled to rely upon this Certificate and are irrevocably authorized to produce this Certificate or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

Very truly yours,

[NAME OF PURCHASER (FOR TRANSFERS) OR OWNER (FOR EXCHANGES)]

By: _

Name: _

Title: _

Address: _

Date: _

Upon transfer, the Warrants would be registered in the name of the new beneficial owner as follows:

____

Taxpayer ID number: _

EXHIBIT 10.1

Execution Version

INTERCREDITOR AGREEMENT

dated as of June 17, 2020 between

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Priority Lien Agent,

and

UMB BANK, N.A.,
as Second Lien Collateral Trustee

THIS IS THE INTERCREDITOR AGREEMENT REFERRED TO IN (A) THE INDENTURE DATED AS OF JUNE 17, 2020, AS AMENDED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME, AMONG SM ENERGY COMPANY, CERTAIN OF ITS SUBSIDIARIES FROM TIME TO TIME PARTY THERETO AND UMB BANK, N.A., AS TRUSTEE, (B) THE SIXTH AMENDED AND RESTATED CREDIT AGREEMENT DATED AS OF SEPTEMBER 28, 2018, AS AMENDED, SUPPLEMENTED, RESTATED OR OTHERWISE MODIFIED FROM TIME TO TIME, AMONG SM ENERGY COMPANY, THE LENDERS PARTY THERETO FROM TIME TO TIME AND WELLS FARGO BANK, NATIONAL ASSOCIATION, AS ADMINISTRATIVE AGENT, (C) THE OTHER NOTE DOCUMENTS REFERRED TO IN SUCH INDENTURE AND (D) THE OTHER LOAN DOCUMENTS REFERRED TO IN SUCH CREDIT AGREEMENT.

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Annex and Exhibits

Annex I

Exhibit A	Form of Priority Confirmation Joinder
Exhibit B	Security Documents

INTERCREDITOR AGREEMENT, dated as of June 17, 2020 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms hereof, this "Agreement"), between WELLS FARGO BANK, NATIONAL ASSOCIATION, as administrative agent for the Priority Lien Secured Parties referred to herein (in such capacity, and together with its successors and assigns in such capacity, the "Original Priority Lien Agent") and UMB BANK, N.A., as collateral trustee for the Second Lien Secured Parties referred to herein (in such capacity, and together with its successors in such capacity, the "Original Second Lien Collateral Trustee").

Reference is made to (a) the Priority Credit Agreement (defined below) and (b) the Second Lien Indenture (defined below) governing the Second Lien Indenture Notes (defined below).

From time to time following the date hereof, SM ENERGY COMPANY, a Delaware corporation (together with its successors and assigns, " SM Energy") may (i) incur Additional Notes and Additional Second Lien Obligations (each as defined below) to the extent permitted by the Secured Debt Documents (as defined below); in connection with the Second Lien Indenture and any Additional Notes or Additional Second Lien Obligations, SM Energy and certain Grantors (as defined below), the Second Lien Trustee (defined below) and the Second Lien Collateral Trustee (defined below) have entered into the Second Lien Collateral Trust Agreement (as defined below) and (ii) incur Initial Third Lien Obligations and Additional Third Lien Obligations (each as defined below) to the extent permitted by the Secured Debt Documents (as defined below); in connection with the Initial Third Lien Obligations, SM Energy and certain of its subsidiaries and the Third Lien Collateral Trustee (as defined below) shall, concurrently with the incurrence of such Initial Third Lien Obligations, enter into a Third Lien Collateral Trust Agreement (as defined below).

In consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Original Priority Lien Agent (for itself and on behalf of the Priority Lien Secured Parties) and the Original Second Lien Collateral Trustee (for itself and on behalf of the Second Lien Secured Parties) agree as follows:

ARTICLE I
DEFINITIONS

Section 1.01 Construction; Certain Defined Terms. (a) 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" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any reference herein to any agreement, instrument, other document, statute or regulation shall be construed as referring to such agreement, instrument, other document, statute or regulation as from time to time amended, supplemented or otherwise modified, (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, but shall not be deemed to include the subsidiaries of such Person unless express reference is made to such subsidiaries, (iii) the words "herein," "hereof and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (iv) all references herein to Articles, Sections and Annexes shall be construed to refer to Articles, Sections and Annexes of this Agreement, (v) unless otherwise expressly qualified herein, the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (vi) the term "or" is not exclusive.

(b) All terms capitalized but not defined herein have the meanings assigned to them in the Priority Credit Agreement as in effect on the date hereof.

(c) All terms used in this Agreement that are defined in Article 1, 8 or 9 of the New York UCC (whether capitalized herein or not) and not otherwise defined herein have the meanings assigned to them in Article 1, 8 or 9 of the New York UCC. If a term is defined in Article 9 of the New York UCC and another Article of the New York UCC, such term shall have the meaning assigned to it in Article 9 of the New York UCC.

(d) Unless otherwise set forth herein, all references herein to (i) the Second Lien Collateral Trustee shall be deemed to refer to the Second Lien Collateral Trustee in its capacity as collateral trustee under the Second Lien Collateral Trust Agreement and (ii) the Third Lien Collateral Trustee shall be deemed to refer to the Third Lien Collateral Trustee in its capacity as collateral trustee under the Third Lien Collateral Trust Agreement.

(e) As used in this Agreement, the following terms have the meanings specified below:

"Accounts" has the meaning assigned to such term in Section 3.01(a).

"Additional Notes" has the meaning given to the term "Additional Notes" in the Second Lien Indenture as in effect on the date hereof.

"Additional Second Lien Debt Facility" means any Indebtedness for which the requirements of Section 4.04(b) of this Agreement have been satisfied, as amended, restated, modified, renewed, refunded, restated, restructured, increased, supplemented, replaced or refinanced in whole or in part from time to time in accordance with each applicable Secured Debt Document; provided that neither the Second Lien Indenture nor any Second Lien Substitute Facility shall constitute an Additional Second Lien Debt Facility at any time.

"Additional Second Lien Documents" means any Additional Second Lien Debt Facility and the Additional Second Lien Security Documents.

"Additional Second Lien Obligations" means, with respect to any Grantor, any obligations of such Grantor owed to any Additional Second Lien Secured Party (or any of its Affiliates) in respect of the Additional Second Lien Documents.

"Additional Second Lien Secured Parties" means, at any time, the Second Lien Collateral Trustee, the trustee, agent or other representative of the holders of any Series of Second Lien Debt who maintains the transfer register for such Series of Second Lien Debt, the beneficiaries of each indemnification obligation undertaken by any Grantor under any Additional Second Lien Document and each other holder of, or obligee in respect of, any Series of Second Lien Debt outstanding at such time; provided that the Indenture Second Lien Secured Parties shall not be deemed Additional Second Lien Secured Parties.

"Additional Second Lien Security Documents" means the Additional Second Lien Debt Facility (insofar as the same grants a Lien on the Collateral) and any other security agreements, pledge agreements, collateral assignments, mortgages, deeds of trust, collateral agency agreements, control agreements, or grants or transfers for security, now existing or entered into after the date hereof, executed

and delivered by SM Energy or any other Grantor creating (or purporting to create) a Lien upon the Second Lien Collateral in favor of the Additional Second Lien Secured Parties.

"Additional Third Lien Debt Facility" means any Indebtedness for which the requirements of Section 4.04(b) of this Agreement have been satisfied, as amended, restated, modified, renewed, refunded, restated, restructured, increased, supplemented, replaced or refinanced in whole or in part from time to time in accordance with each applicable Secured Debt Document; provided that no Third Lien Substitute Facility shall constitute an Additional Third Lien Debt Facility at any time.

"Additional Third Lien Documents" means any Additional Third Lien Debt Facility and the Additional Third Lien Security Documents.

"Additional Third Lien Obligations" means, with respect to any Grantor, any obligations of such Grantor owed to any Additional Third Lien Secured Party (or any of its Affiliates) in respect of the Additional Third Lien Documents.

"Additional Third Lien Secured Parties" means, at any time, the Third Lien Collateral Trustee, the trustee, agent or other representative of the holders of any Series of Third Lien Debt who maintains the transfer register for such Series of Third Lien Debt, the beneficiaries of each indemnification obligation undertaken by any Grantor under any Additional Third Lien Document and each other holder of, or obligee in respect of, any Series of Third Lien Debt outstanding at such time.

"Additional Third Lien Security Documents" means the Additional Third Lien Debt Facility (insofar as the same grants a Lien on the Collateral) and any other security agreements, pledge agreements, collateral assignments, mortgages, deeds of trust, collateral agency agreements, control agreements, or grants or transfers for security, now existing or entered into after the date hereof, executed and delivered by SM Energy or any other Grantor creating (or purporting to create) a Lien upon the Third Lien Collateral in favor of the Additional Third Lien Secured Parties (including any such agreements, assignments, mortgages, deeds of trust and other documents or instruments associated with any Third Lien Substitute Facility).

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control," as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise; provided that beneficial ownership of 10% or more of the Voting Stock of a Person will be deemed to be control. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" have correlative meanings.

"Bank Product" means each and any of the following bank services and products provided to SM Energy or any other Grantor or any subsidiary thereof by any lender under the Priority Credit Agreement or any Affiliate of any such lender: (a) commercial and corporate credit cards or debit cards, (b) purchase cards, (c) stored value cards, (d) Treasury Management Arrangements (including, without limitation, overdraft, depository, controlled disbursement, electronic funds transfer, automated clearinghouse transactions, return items, overdrafts and interstate depository network services) and (e) all other similar products as described in the definition of the term "Bank Product" in any Priority Substitute Credit Facility.

"Bank Product Obligations" means any and all obligations of SM Energy or any other Grantor, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired

(including all renewals, extensions and modifications thereof and substitutions therefor) in connection with any Bank Product.

"Bankruptcy Code" means Title 11 of the United States Code.

"Bankruptcy Law" means the Bankruptcy Code and any similar federal, state or foreign law for the relief of debtors.

"Board of Directors" means: (a) with respect to a corporation, the board of directors of the corporation; (b) with respect to a partnership, the Board of Directors of the general partner of the partnership; and (c) with respect to any other Person, the board or committee of such Person serving a similar function.

"Borrowing Base" has the meaning set forth in the Second Lien Indenture as in effect on the date hereof, and any component definition used therein has the meaning set forth in the Second Lien Indenture as of the date hereof.

"Borrowing Base Deficiency" occurs if at any time the Aggregate Revolving Credit Exposures (as defined in the Priority Credit Agreement in effect on the date hereof) exceed the Borrowing Base then in effect. The amount of any Borrowing Base Deficiency at such time is the amount by which the Aggregate Revolving Credit Exposures at such time exceeds the Borrowing Base in effect at such time; provided, that, for purposes of determining the existence and amount of any Borrowing Base Deficiency, obligations under any Letter of Credit (as defined in the Priority Credit Agreement in effect on the date hereof) will not be deemed to be outstanding to the extent that such obligations are secured by cash as contemplated by the Priority Credit Agreement as in effect on the date hereof.

"Business Day" means each day that is not a Saturday, Sunday or other day on which banking institutions in Houston, Texas, Charlotte, North Carolina or Denver, Colorado are authorized or required by law to close.

"Capital Stock" means (a) in the case of a corporation, corporate stock; (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock; (c) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests or membership units; and (d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

"Class" means (a) in the case of Priority Lien Debt, the Priority Lien Debt, taken together, (b) in the case of Second Lien Debt, every Series of Second Lien Debt, taken together and (c) in the case of Third Lien Debt, every Series of Third Lien Debt, taken together.

"Collateral" means all of the assets and property of any Grantor, whether real, personal or mixed, constituting Priority Lien Collateral, Second Lien Collateral and/or Third Lien Collateral.

"Credit Facilities" means, one or more debt facilities (including the Priority Credit Agreement), commercial paper facilities, loan agreements or other financing agreements (other than bonds or debt securities), the majority of the loans or commitments under which, collectively, as of the date of the closing of such facilities or agreements, are provided by commercial banks, by affiliates of commercial banks customarily engaging in making or providing commercial loans or other financing, or by governmental authorities, and which facilities or agreements provide for revolving loans, term loans,

letters of credit or similar financing arrangements, in each case, as amended, restated, modified, renewed, re-funded, replaced or refinanced in whole or in part from time to time with facilities or agreements that satisfy the above requirements.

"DIP Financing" has the meaning assigned to such term in Section 4.02(b).

"DIP Financing Liens" has the meaning assigned to such term in Section 4.02(b).

"DIP Lenders" has the meaning assigned to such term in Section 4.02(b).

"Discharge of Priority Lien Obligations" means the occurrence of all of the following:

(a) termination or expiration of all commitments to extend credit that would constitute Priority Lien Debt;

(b) payment in full in cash of the principal of and interest and premium (if any) on all Priority Lien Debt (other than any undrawn letters of credit);

(c) discharge or cash collateralization (at the lower of (i) 102% of the aggregate undrawn amount and (ii) the percentage of the aggregate undrawn amount required for release of Liens under the terms of the applicable Priority Lien Document) of all outstanding letters of credit constituting Priority Lien Obligations and, in the case of discharge, the aggregate fronting and similar fees which have accrued thereon through the date of discharge of such letters of credit, and, in the case of cash collateralization, the aggregate fronting and similar fees which will accrue thereon through the stated expiry of such letters of credit;

(d) payment in full in cash of obligations in respect of Hedging Obligations constituting Priority Lien Obligations (and, with respect to any particular Hedge Agreement, termination of such agreement and payment in full in cash of all obligations thereunder or such other arrangements as have been made by the counterparty thereto (and communicated to the Priority Lien Agent) pursuant to the terms of the Priority Credit Agreement); and

(e) payment in full in cash of all other Priority Lien Obligations, including without limitation, Bank Product Obligations that are outstanding and unpaid at the time the Priority Lien Debt is paid in full in cash (other than (i) any obligations for taxes, costs, indemnifications, reimbursements, damages and other liabilities in respect of which no claim or demand for payment has been made at or prior to such time and (ii) any Bank Product Obligations for which other arrangements have been made by the provider of such Bank Product Obligations (and communicated to the Priority Lien Agent) pursuant to the terms of the Priority Credit Agreement);

provided that, if, at any time after the Discharge of Priority Lien Obligations has occurred, SM Energy enters into any Priority Lien Document evidencing a Priority Lien Obligation which incurrence thereof is not prohibited by the applicable Secured Debt Documents, then such Discharge of Priority Lien Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement with respect to such new Priority Lien Obligations (other than with respect to any actions taken as a result of the occurrence of such first Discharge of Priority Lien Obligations), and, from and after the date on which SM Energy designates such Indebtedness as Priority Lien Debt in accordance with this Agreement, the obligations under such Priority Lien Document shall automatically and without any further action be treated as Priority Lien Obligations for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth in this Agreement, any Second Lien Obligations shall

be deemed to have been at all times Second Lien Obligations and at no time Priority Lien Obligations and any Third Lien Obligations shall be deemed to have been at all times Third Lien Obligations and at no time Priority Lien Obligations or Second Lien Obligations. For the avoidance of doubt, a Replacement as contemplated by Section 4.04(a) shall not be deemed to cause a Discharge of Priority Lien Obligations.

"Discharge of Second Lien Obligations" means the occurrence of all of the following:

(a) payment in full in cash of the principal of and interest and premium (if any) on all Second Lien Debt;

(b) payment in full in cash of all other Second Lien Obligations that are outstanding and unpaid at the time the Second Lien Debt is paid in full in cash (other than any obligations for taxes, costs, indemnifications, reimbursements, damages and other liabilities in respect of which no claim or demand for payment has been made at or prior to such time);

provided that, if at any time after the Discharge of Second Lien Obligations has occurred, SM Energy enters into any Second Lien Document evidencing a Second Lien Obligation which incurrence is not prohibited by the applicable Secured Debt Documents, then such Discharge of Second Lien Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement with respect to such new Second Lien Obligations (other than with respect to any actions taken as a result of the occurrence of such first Discharge of Second Lien Obligations), and, from and after the date on which SM Energy designates such Indebtedness as Second Lien Debt in accordance with this Agreement, the obligations under such Second Lien Document shall automatically and without any further action be treated as Second Lien Obligations for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth in this Agreement, any Third Lien Obligations shall be deemed to have been at all times Third Lien Obligations and at no time Second Lien Obligations. For the avoidance of doubt, a Replacement as contemplated by Section 4.04(a) shall not be deemed to cause a Discharge of Second Lien Obligations.

"Disposition" shall mean any sale, lease, exchange, assignment, license, contribution, transfer or other disposition. "Dispose" shall have a correlative meaning.

"Excess Priority Lien Obligations" means Obligations constituting Priority Lien Obligations for the principal amount of indebtedness (including letters of credit and letter of credit reimbursement obligations) under the Priority Credit Agreement and/or any other Credit Facility pursuant to which Priority Lien Debt has been issued to the extent that such Obligations for principal, letters of credit and letter of credit reimbursement obligations are in excess of the amount in clause (a) of the definition of "Priority Lien Cap."

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

"Grantor" means SM Energy and each subsidiary of SM Energy that shall have granted any Lien in favor of any of the Priority Lien Agent, the Second Lien Collateral Trustee or the Third Lien Collateral Trustee on any of its assets or properties to secure any of the Secured Obligations.

"Hedging Obligations" means, with respect to any Grantor, the obligations of such Grantor incurred in the normal course of business and consistent with past practices and not for speculative

purposes under any swap, forward, future or derivative transaction or option or similar agreement, whether exchange traded, "over-the-counter" or otherwise, involving, or settled by reference to, one or more rates, currencies, commodities, 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 (including any agreement, including Electric Swap Agreements, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act) or any combination of these transactions, including all transactions of any kind, and the related confirmations, that are subject to the terms and conditions of, or governed by, any form of master agreement including any such obligations or liabilities under any such master agreement (in each case, together with any related schedules) provided that no obligations in respect of phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of SM Energy or any subsidiary thereof shall be Hedging Obligations.

"Indenture Second Lien Documents" means the Second Lien Indenture, the Second Lien Indenture Notes, the Indenture Second Lien Security Documents and all other loan documents, notes, guarantees, instruments and agreements governing or evidencing the Indenture Second Lien Obligations or any Second Lien Substitute Facility.

"Indenture Second Lien Obligations" means, with respect to any Grantor, any obligations of such Grantor owed to any Indenture Second Lien Secured Party (or any of its Affiliates) in respect of the Indenture Second Lien Documents.

"Indenture Second Lien Secured Parties" means, at any time, the Second Lien Trustee, the Second Lien Collateral Trustee, the trustees, agents and other representatives of the holders of the Second Lien Indenture Notes (including any holders of notes pursuant to supplements executed in connection with the issuance of any Series of Second Lien Debt under the Second Lien Indenture) who maintains the transfer register for such Second Lien Indenture Notes or such Series of Second Lien Debt, the beneficiaries of each indemnification obligation undertaken by any Grantor under any Indenture Second Lien Document and each other holder of, or obligee in respect of, any Second Lien Indenture Notes, any holder or lender pursuant to any Indenture Second Lien Document outstanding at such time; provided that the Additional Second Lien Secured Parties shall not be deemed Indenture Second Lien Secured Parties.

"Indenture Second Lien Security Documents" means the Second Lien Indenture (insofar as the same grants a Lien on the Collateral), the Second Lien Collateral Trust Agreement, each agreement listed in Part B of Exhibit B hereto and any other security agreements, pledge agreements, collateral assignments, mortgages, deeds of trust, collateral agency agreements, control agreements, or grants or transfers for security, now existing or entered into after the date hereof, executed and delivered by SM Energy or any other Grantor creating (or purporting to create) a Lien upon Collateral in favor of the Second Lien Collateral Trustee (including any such agreements, assignments, mortgages, deeds of trust and other documents or instruments associated with any Second Lien Substitute Facility).

"Initial Third Lien Debt Facility" means Indebtedness secured by a Third Lien for which the requirements of Section 4.04(c) of this Agreement have been satisfied, as amended, restated, modified, renewed, refunded, restated, restructured, increased, supplemented, replaced or refinanced in whole or in part from time to time in accordance with each applicable Secured Debt Document.

"Initial Third Lien Documents" means the Initial Third Lien Debt Facility and the Initial Third Lien Security Documents.

"Initial Third Lien Obligations" means, with respect to any Grantor, any obligations of such Grantor owed to any Initial Third Lien Secured Party (or any of its Affiliates) in respect of the Initial Third Lien Documents.

"Initial Third Lien Secured Parties" means, at any time, the Third Lien Trustee, the Third Lien Collateral Trustee, the trustees, agents and other representatives of the holders of the Initial Third Lien Debt Facility (including any holders of notes pursuant to supplements executed in connection with the issuance of Series of Third Lien Debt under the Initial Third Lien Debt Facility) who maintains the transfer register for such Third Lien Debt, the beneficiaries of each indemnification obligation undertaken by any Grantor under any Initial Third Lien Document and each other holder of, or obligee in respect of, any Initial Third Lien Obligations, any holder or lender pursuant to any Initial Third Lien Document outstanding at such time; provided that the Additional Third Lien Secured Parties shall not be deemed Initial Third Lien Secured Parties.

"Initial Third Lien Security Documents" means the Initial Third Lien Debt Facility (insofar as the same grants a Lien on the Collateral) and any other security agreements, pledge agreements, collateral assignments, mortgages, deeds of trust, collateral agency agreements, control agreements, or grants or transfers for security, now existing or entered into after the date hereof, executed and delivered by SM Energy or any other Grantor creating (or purporting to create) a Lien upon the Third Lien Collateral in favor of the Initial Third Lien Secured Parties (including any such agreements, assignments, mortgages, deeds of trust and other documents or instruments associated with any Third Lien Substitute Facility).

"Insolvency or Liquidation Proceeding" means:

(a) any case commenced by or against SM Energy or any other Grantor under the Bankruptcy Code or any other Bankruptcy Law, any other proceeding for the reorganization, recapitalization or adjustment or marshalling of the assets or liabilities of SM Energy or any other Grantor, any receivership or assignment for the benefit of creditors relating to SM Energy or any other Grantor or any similar case or proceeding relative to SM Energy or any other Grantor or its creditors, as such, in each case whether or not voluntary;

(b) any liquidation, dissolution, marshalling of assets or liabilities or other winding up of or relating to SM Energy or any other Grantor, in each case whether or not voluntary and whether or not involving bankruptcy or insolvency; or

(c) any other proceeding of any type or nature in which substantially all claims of creditors of SM Energy or any other Grantor are determined and any payment or distribution is or may be made on account of such claims.

"Lien" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest, hypothecation, or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any agreement to give a security interest therein and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction.

"Modified ACNTA" means "Adjusted Consolidated Net Tangible Assets" as defined in the Second Lien Indenture as in effect on the date hereof, and any component definition used therein has the meaning set forth in the Second Lien Indenture as of the date hereof.

"New York UCC" means the Uniform Commercial Code as from time to time in effect in the State of New York.

"Obligations" means any principal (including reimbursement obligations and obligations to provide cash collateral with respect to letters of credit whether or not drawn), interest, premium (if any), fees, indemnifications, reimbursements, expenses and other liabilities payable under the documentation governing any Indebtedness (including, to the extent legally permitted, all interest, premiums, fees, indemnifications, reimbursements, expenses and other liabilities accrued thereon after the commencement of any Insolvency or Liquidation Proceeding at the rate, including any applicable post-default rate even if such applicable amount is not enforceable, allowable or allowed as a claim in such proceeding).

"Officer" means, with respect to any Person, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary, any Senior Vice President, any Vice President or any Assistant Vice President of such Person.

"Officer's Certificate" means a certificate signed on behalf of SM Energy by any Officer of SM Energy.

"Original Priority Lien Agent" has the meaning assigned to such term in the preamble hereto.

"Original Second Lien Collateral Trustee" has the meaning assigned to such term in the preamble hereto.

"Original Second Lien Trustee" means UMB Bank, N.A., in its capacity as trustee under the Second Lien Indenture, and together with its successors in such capacity.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company or government or other entity.

"Priority Confirmation Joinder" means an agreement substantially in the form of Exhibit A.

"Priority Credit Agreement" means the Sixth Amended and Restated Credit Agreement, dated as of September 28, 2018, among SM Energy, as borrower, the Original Priority Lien Agent, the lenders party thereto from time to time, and the other agents named therein, as amended, restated, adjusted, waived, renewed, extended, supplemented or otherwise modified from time to time under a Credit Facility, and any Credit Facility evidencing or governing the terms of any Priority Substitute Credit Facility.

"Priority Lien" means a Lien granted by SM Energy or any other Grantor in favor of the Priority Lien Agent, at any time, upon any Property of SM Energy or such Grantor to secure Priority Lien Obligations (including Liens on such Collateral under the security documents associated with any Priority Substitute Credit Facility).

"Priority Lien Agent" means the Original Priority Lien Agent, and, from and after the date of execution and delivery of a Priority Substitute Credit Facility, the agent, collateral agent, trustee or other representative of the lenders or holders of the indebtedness and other Obligations evidenced thereunder or governed thereby, in each case, together with its successors in such capacity.

"Priority Lien Cap" means, as of any date, (a) the aggregate principal amount of all indebtedness (including any interest paid in kind) outstanding at any time under the Priority Credit Agreement (with outstanding letters of credit being deemed to have a principal amount equal to the stated amount thereof) equal to the greatest of (i) $1,100,000,000.00, (ii) the Borrowing Base in effect at the time of incurrence of such indebtedness, and (iii) 25.0% of Modified ACNTA at the time of incurrence of such indebtedness plus (b) the amount of all Hedging Obligations, to the extent such Hedging Obligations are secured by the Priority Liens, plus (c) the amount of all Bank Product Obligations to the extent such Bank Product Obligations are secured by the Priority Liens, plus (d) the amount of accrued and unpaid interest (excluding any interest paid-in-kind) and outstanding fees, to the extent such Obligations are secured by the Priority Liens.

"Priority Lien Collateral" shall mean all "Collateral" (or comparable term), as defined in the Priority Credit Agreement or any other Priority Lien Document, and any other assets of any Grantor now or at any time hereafter subject to Liens which secure, but only to the extent securing, any Priority Lien Obligation.

"Priority Lien Debt" means the indebtedness under the Priority Credit Agreement (including letters of credit and reimbursement obligations with respect thereto) (with outstanding letters of credit being deemed to have a principal amount equal to the stated amount thereof) and additional indebtedness under any Priority Substitute Credit Facility.

"Priority Lien Documents" means the Priority Credit Agreement, the Priority Lien Security Documents, the other "Loan Documents" (as defined in the Priority Credit Agreement) and all other loan documents, notes, guarantees, instruments and agreements governing or evidencing, or executed or delivered in connection with, any Priority Substitute Credit Facility.

"Priority Lien Obligations" means the Priority Lien Debt and all other Obligations in respect of or in connection with Priority Lien Debt together with Hedging Obligations and the Bank Product Obligations, in each case to the extent that such Obligations are secured by Priority Liens. For the avoidance of doubt, Hedging Obligations shall only constitute Priority Lien Obligations to the extent that such Hedging Obligations are secured under the terms of the Priority Credit Agreement and Priority Lien Security Documents. Notwithstanding any other provision hereof, the term "Priority Lien Obligations" will include accrued interest, fees, costs, and other charges incurred under the Priority Credit Agreement and the other Priority Lien Documents, whether incurred before or after commencement of an Insolvency or Liquidation Proceeding, and whether or not allowable in an Insolvency or Liquidation Proceeding. To the extent that any payment with respect to the Priority Lien Obligations (whether by or on behalf of SM Energy, as proceeds of security, enforcement of any right of set-off, or otherwise) is declared to be fraudulent or preferential in any respect, set aside, or required to be paid to a debtor in possession, trustee, receiver, or similar Person, then the obligation or part thereof originally intended to be satisfied will be deemed to be reinstated and outstanding as if such payment had not occurred.

"Priority Lien Secured Parties" means, at any time, the Priority Lien Agent, each lender or issuing bank under the Priority Credit Agreement, each holder, provider or obligee of any Hedging Obligations and Bank Product Obligations that is a lender under the Priority Credit Agreement or an Affiliate (as defined herein or in the Priority Credit Agreement) thereof and is a secured party (or a party entitled to the benefits of the security) under any Priority Lien Document, the beneficiaries of each indemnification obligation undertaken by any Grantor under any Priority Lien Document, each other Person that provides letters of credit, guarantees or other credit support related thereto under any Priority Lien Document and each other holder of, or obligee in respect of, any Priority Lien Obligations (including pursuant to a

Priority Substitute Credit Facility), in each case to the extent designated as a secured party (or a party entitled to the benefits of the security) under any Priority Lien Document outstanding at such time.

"Priority Lien Security Documents" means the Priority Credit Agreement (insofar as the same grants a Lien on the Collateral), each agreement listed in Part A of Exhibit B hereto, and any other security agreements, pledge agreements, collateral assignments, mortgages, deeds of trust, control agreements, or grants or transfers for security, now existing or entered into after the date hereof, executed and delivered by SM Energy or any other Grantor creating (or purporting to create) a Lien upon Collateral in favor of the Priority Lien Agent (including any such agreements, assignments, mortgages, deeds of trust and other documents or instruments associated with any Priority Substitute Credit Facility).

"Priority Substitute Credit Facility" means any Credit Facility with respect to which the requirements contained in Section 4.04(a) of this Agreement have been satisfied and that Replaces the Priority Credit Agreement then in existence.

"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, Capital Stock and contract rights.

"Replaces" means, (a) in respect of any agreement with reference to the Priority Credit Agreement or the Priority Lien Obligations or any Priority Substitute Credit Facility, that such agreement refunds, refinances, amends and restates, or replaces the Priority Credit Agreement, the Priority Lien Obligations or such Priority Substitute Credit Facility in whole (in a transaction that is in compliance with Section 4.04(a)) and that all commitments thereunder are terminated, or, to the extent permitted by the terms of the Priority Credit Agreement, Priority Lien Obligations or such Priority Substitute Credit Facility, in part, (b) in respect of any agreement with reference to the Second Lien Documents, the Second Lien Obligations or any Second Lien Substitute Facility, that such indebtedness refunds, refinances, amends and restates or replaces the Second Lien Documents, the Second Lien Obligations or such Second Lien Substitute Facility in whole (in a transaction that is in compliance with Section 4.04(a)) and that all commitments thereunder are terminated, or, to the extent permitted by the terms of the Second Lien Documents, the Second Lien Obligations or such Second Lien Substitute Facility, in part and (c) in respect of any agreement with reference to the Third Lien Documents, the Third Lien Obligations or any Third Lien Substitute Facility, that such indebtedness refunds, refinances, amends and restates or replaces the Third Lien Documents, the Third Lien Obligations or such Third Lien Substitute Facility in whole (in a transaction that is in compliance with Section 4.04(a)) and that all commitments thereunder are terminated, or, to the extent permitted by the terms of the Third Lien Documents, the Third Lien Obligations, or such Third Lien Substitute Facility, in part. "Replace," "Replaced", "Replacing" and "Replacement" shall have correlative meanings.

"Reserve Report" has the meaning assigned to such term in the Priority Credit Agreement as in effect on the date hereof.

"Second Lien" means a Lien granted by a Second Lien Document to the Second Lien Collateral Trustee, at any time, upon any Collateral by any Grantor to secure Second Lien Obligations (including Liens on such Collateral under the security documents associated with any Second Lien Substitute Facility).

"Second Lien Collateral" shall mean all "Collateral" (or comparable term), as defined in any Second Lien Document, and any other assets of any Grantor now or at any time hereafter subject to Liens which secure, but only to the extent securing, any Second Lien Obligations.

"Second Lien Collateral Trust Agreement" means the Collateral Trust Agreement, dated as of June 17, 2020, among SM Energy, the other Grantors from time to time party thereto, the Second Lien Trustee, the other Second Lien Representatives from time to time party thereto and the Second Lien Collateral Trustee, as amended, restated, adjusted, waived, renewed, extended, supplemented or otherwise modified from time to time, in accordance with each applicable Second Lien Document.

"Second Lien Collateral Trustee" means the Original Second Lien Collateral Trustee, and, from and after the date of execution and delivery of a Second Lien Substitute Facility, the agent, collateral agent, trustee or other representative of the lenders or other holders of the indebtedness and other obligations evidence thereunder or governed thereby, in each case, together with its successors in such capacity.

"Second Lien Debt" means the indebtedness under the Second Lien Indenture Notes issued on the date hereof and guarantees thereof and all additional indebtedness incurred under any Additional Second Lien Documents and all additional indebtedness in respect of Additional Notes and guarantees thereof, in each case, that was permitted to be incurred and secured in accordance with the Secured Debt Documents and with respect to which the requirements of Section 4.04(b) have been (or are deemed) satisfied, and all Indebtedness incurred under any Second Lien Substitute Facility.

"Second Lien Documents" means the Indenture Second Lien Documents and the Additional Second Lien Documents.

"Second Lien Indenture" means the Indenture, dated as of June 17, 2020, among SM Energy, the Grantors party thereto from time to time, the Second Lien Collateral Trustee and the Second Lien Trustee, as amended, restated, adjusted, waived, renewed, extended, supplemented or otherwise modified from time to time in accordance with the terms hereof (including any supplements executed in connection with the issuance of any Series of Second Lien Debt under the Second Lien Indenture) unless restricted by the terms of this Agreement, and any credit agreement, loan agreement, note agreement, promissory note, indenture or any other agreement, document or instrument evidencing or governing the terms of any Second Lien Substitute Facility.

"Second Lien Indenture Notes" means (i) the 10.00% Senior Secured Notes due 2025 issued under the Second Lien Indenture on the date hereof, and (ii) any Additional Notes for which the requirements of Section 3.8 of the Second Lien Collateral Trust Agreement have been satisfied.

"Second Lien Obligations" means Second Lien Debt and all other Obligations in respect thereof. Notwithstanding any other provision hereof, the term "Second Lien Obligations" will include accrued interest, fees, costs, and other charges incurred under the Second Lien Indenture and the other Second Lien Documents, whether incurred before or after commencement of an Insolvency or Liquidation Proceeding and whether or not allowable in an Insolvency or Liquidation Proceeding. To the extent that any payment with respect to the Second Lien Obligations (whether by or on behalf of SM Energy, as proceeds of security, enforcement of any right of set-off, or otherwise) is declared to be fraudulent or preferential in any respect, set aside, or required to be paid to a debtor in possession, trustee, receiver, or similar Person, then the obligation or part thereof originally intended to be satisfied will be deemed to be reinstated and outstanding as if such payment had not occurred.

"Second Lien Purchasers" has the meaning assigned to such term in Section 3.06.

"Second Lien Representative" means (a) in the case of the Second Lien Indenture Notes, the Second Lien Trustee, and (b) in the case of any other Series of Second Lien Debt, the trustee, agent or representative of the holders of such Series of Second Lien Debt who (i) is appointed as a Second Lien Representative (for purposes related to the administration of the security documents) pursuant to the indenture, credit agreement or other agreement governing such Series of Second Lien Debt, together with its successors in such capacity, and (ii) has become party to the Second Lien Collateral Trust Agreement by executing a joinder in the form required under the Second Lien Collateral Trust Agreement.

"Second Lien Secured Parties" means the Indenture Second Lien Secured Parties and the Additional Second Lien Secured Parties.

"Second Lien Security Documents" means the Indenture Second Lien Security Documents and the Additional Second Lien Security Documents.

"Second Lien Standstill Period" has the meaning assigned to such term in Section 3.02(a)(i).

"Second Lien Substitute Facility" means any facility with respect to which the requirements contained in Section 4.04(a) of this Agreement have been satisfied and that is permitted to be incurred pursuant to the Priority Lien Documents, the proceeds of which are used to, among other things, Replace the Second Lien Indenture and/or any Additional Second Lien Debt Facility then in existence. For the avoidance of doubt, no Second Lien Substitute Facility shall be required to be evidenced by notes or other instruments and may be a facility evidenced or governed by a credit agreement, loan agreement, note agreement, promissory note, indenture or any other agreement or instrument; provided that the Liens securing any such Second Lien Substitute Facility shall be subject to the terms of this Agreement for all purposes (including the lien priority as set forth herein as of the date hereof) as the other Liens securing the Second Lien Obligations which are subject to the terms of this Agreement.

"Second Lien Trustee" means the Original Second Lien Trustee, and, from and after the date of execution and delivery of the Second Lien Substitute Facility, the agent, collateral agent, trustee or other representative of the lenders or other holders of the indebtedness and other obligations evidenced thereunder or governed thereby, together with its successors in such capacity.

"Secured Debt Documents" means the Priority Lien Documents, the Second Lien Documents and the Third Lien Documents.

"Secured Debt Representative" means each of the Priority Lien Agent, the Second Lien Collateral Trustee or the Third Lien Collateral Trustee.

"Secured Obligations" means the Priority Lien Obligations, the Second Lien Obligations and the Third Lien Obligations.

"Secured Parties" means the Priority Lien Secured Parties, the Second Lien Secured Parties and the Third Lien Secured Parties.

"Security Documents" means the Priority Lien Security Documents, the Second Lien Security Documents and the Third Lien Security Documents.

"Series of Second Lien Debt" means, severally, the Second Lien Indenture Notes and each other issue or series of Second Lien Debt (including any Additional Second Lien Debt Facility) for which a single transfer register is maintained.

"Series of Secured Debt" means the Priority Lien Debt, each Series of Second Lien Debt and each Series of Third Lien Debt.

"Series of Third Lien Debt" means, severally, the Initial Third Lien Debt Facility and each other issue or series of Third Lien Debt (including any Additional Third Lien Debt Facility) for which a single transfer register is maintained.

"SM Energy" has the meaning assigned thereto in the preamble.

"Standstill Period" means the Second Lien Standstill Period, the Third Lien First Standstill Period and the Third Lien Second Standstill Period, as applicable.

"subsidiary" means, with respect to any specified Person: (1) any corporation, association, limited liability company or other business entity (other than a partnership) of which more than 50% of the total voting power of Voting Stock is at the time owned or controlled, directly or through another subsidiary, by that Person or one or more of the other subsidiaries of that Person (or a combination thereof); and (2) any partnership (a) the sole general partner or the managing general partner of which is such Person or a subsidiary of such Person or (b) the only general partners of which are that Person or one or more subsidiaries of that Person (or any combination thereof), or (c) as to which such Person and its subsidiaries are entitled to receive more than 50% of the assets of such partnership upon its dissolution.

"Third Lien" means a Lien granted by a Third Lien Document to the Third Lien Collateral Trustee, at any time, upon any Collateral by any Grantor to secure Third Lien Obligations (including Liens on such Collateral under the security documents associated with any Third Lien Substitute Facility).

"Third Lien Collateral" shall mean all "Collateral" (or comparable term), as defined in any Third Lien Document, and any other assets of any Grantor now or at any time hereafter subject to Liens which secure, but only to the extent securing, any Third Lien Obligations.

"Third Lien Collateral Trust Agreement" means from and after the date of execution and delivery of the Initial Third Lien Debt Facility, a collateral trust agreement entered into among SM Energy, the other Grantors, the Third Lien Trustee, the other Third Lien Representatives and the Third Lien Collateral Trustee, as amended, restated, adjusted, waived, renewed, extended, supplemented or otherwise modified from time to time, in accordance with each applicable Third Lien Document.

"Third Lien Collateral Trustee" means from and after the date of execution and delivery of the Initial Third Lien Debt Facility, the agent, collateral agent, trustee or other representative of the lenders or other holders of the indebtedness and other obligations evidenced thereunder or governed thereby, in each case, together with its successors in such capacity.

"Third Lien Debt" means indebtedness under the Initial Third Lien Debt Facility and indebtedness incurred under any Additional Third Lien Documents and with respect to which the requirements of Section 4.04(c) have been satisfied, and all indebtedness incurred under any Third Lien Substitute Facility.

"Third Lien Documents" means the Initial Third Lien Documents, the Additional Third Lien Documents and all other loan documents, notes, guarantees, instruments and agreements governing or evidencing any Third Lien Substitute Facility.

"Third Lien First Standstill Period" has the meaning assigned to such term in Section 3.02(a)(ii).

"Third Lien Obligations" means Third Lien Debt and all other Obligations in respect thereof. Notwithstanding any other provision hereof, the term "Third Lien Obligations" will include accrued interest, fees, costs, and other charges incurred under the Third Lien Documents, whether incurred before or after commencement of an Insolvency or Liquidation Proceeding. To the extent that any payment with respect to the Third Lien Obligations (whether by or on behalf of SM Energy, as proceeds of security, enforcement of any right of set-off, or otherwise) is declared to be fraudulent or preferential in any respect, set aside, or required to be paid to a debtor in possession, trustee, receiver, or similar Person, then the obligation or part thereof originally intended to be satisfied will be deemed to be reinstated and outstanding as if such payment had not occurred.

"Third Lien Representative" means (a) in the case of the Initial Third Lien Debt Facility, the Third Lien Trustee and (b) in the case of any other Series of Third Lien Debt, the trustee, agent or representative of the holders of such Series of Third Lien Debt who (i) is appointed as a Third Lien Representative (for purposes related to the administration of the security documents) pursuant to the indenture, credit agreement or other agreement governing such Series of Third Lien Debt, together with its successors in such capacity, and (ii) has become party to the Third Lien Collateral Trust Agreement by executing a joinder in the form required under the Third Lien Collateral Trust Agreement.

"Third Lien Second Standstill Period" has the meaning assigned to such term in Section 3.02(b).

"Third Lien Secured Parties" means the Initial Third Lien Secured Parties and the Additional Third Lien Secured Parties.

"Third Lien Security Documents" means the Initial Third Lien Security Documents and the Additional Third Lien Security Documents.

"Third Lien Substitute Facility" means any facility with respect to which the requirements contained in Section 4.04(a) of this Agreement have been satisfied and that is permitted to be incurred pursuant to the Priority Lien Documents and the Second Lien Documents, the proceeds of which are used to, among other things, Replace any Initial Third Lien Debt Facility and/or Additional Third Lien Debt Facility then in existence. For the avoidance of doubt, no Third Lien Substitute Facility shall be required to be evidenced by notes or other instruments and may be a facility evidenced or governed by a credit agreement, loan agreement, note agreement, promissory note, indenture or any other agreement or instrument; provided that the Liens securing any such Third Lien Substitute Facility shall be subject to the terms of this Agreement for all purposes (including the lien priority as set forth herein as of the date hereof) as the other Liens securing the Third Lien Obligations which are subject to the terms of this Agreement.

"Third Lien Trustee" means, from and after the date of execution and delivery of the Initial Third Lien Debt Facility or Third Lien Substitute Facility, the agent, collateral agent, trustee or other representative of the lenders or other holders of the indebtedness and other obligations evidenced thereunder or governed thereby, together with its successors in such capacity.

"TIA" means the Trust Indenture Act of 1939 (15 U.S.C. Section 77aaa-77bbbb) as in effect on the date hereof.

"Treasury Management Arrangement" means any agreement or other arrangement governing the provision of treasury or cash management services, including deposit accounts, overdraft, credit or debit card, funds transfer, automated clearinghouse, zero balance accounts, returned check concentration, controlled disbursement, lockbox, account reconciliation and reporting and trade finance services and other cash management services.

"Voting Stock" of any Person as of any date means the Capital Stock of such Person that is at the time entitled (without regard to the occurrence of any contingency) to vote in the election of the Board of Directors of such Person.

ARTICLE II
LIEN PRIORITIES

Section 2.01 Relative Priorities. (a) The grant of the Priority Liens pursuant to the Priority Lien Documents, the grant of the Second Liens pursuant to the Second Lien Documents and the grant of the Third Liens pursuant to the Third Lien Documents create three separate and distinct Liens on the Collateral.

(b) Notwithstanding anything contained in this Agreement, the Priority Lien Documents, the Second Lien Documents, the Third Lien Documents or any other agreement or instrument or operation of law to the contrary, or any other circumstance whatsoever and irrespective of (i) how a Lien was acquired (whether by grant, possession, statute, operation of law, subrogation, or otherwise), (ii) the time, manner, or order of the grant, attachment or perfection of a Lien, (iii) any conflicting provision of the New York UCC or other applicable law, (iv) any defect in, or non-perfection, setting aside, or avoidance of, a Lien or a Priority Lien Document, a Second Lien Document or a Third Lien Document, (v) the modification of a Priority Lien Obligation, a Second Lien Obligation or a Third Lien Obligation, or (vi) the subordination of a Lien on Collateral securing a Priority Lien Obligation to a Lien securing another obligation of SM Energy or other Person that is permitted under the Priority Lien Documents as in effect on the date hereof or securing a DIP Financing, each of the Priority Lien Agent, on behalf of itself and the other Priority Lien Secured Parties, the Second Lien Collateral Trustee, on behalf of itself and the other Second Lien Secured Parties, and the Third Lien Collateral Trustee, on behalf of itself and the other Third Lien Secured Parties, hereby agrees that (i) any Priority Lien on any Collateral now or hereafter held by or for the benefit of any Priority Lien Secured Party (subject to the Priority Lien Cap) shall be senior in right, priority, operation, effect and all other respects to (A) any and all Second Liens on any Collateral and (B) any and all Third Liens on any Collateral, (ii) any Second Lien on any Collateral now or hereafter held by or for the benefit of any Second Lien Secured Party shall be (A) junior and subordinate in right, priority, operation, effect and all other respects to any and all Priority Liens on any Collateral, in any case, subject to the Priority Lien Cap as provided herein and (B) senior in right, priority, operation, effect and all other respects to any and all Third Liens on any Collateral and (iii) any Third Lien on any Collateral now or hereafter held by or for the benefit of any Third Lien Secured Party shall be junior and subordinate in right, priority, operation, effect and all other respects to (A) any and all Priority Liens on any Collateral, in any case, subject to the Priority Lien Cap as provided herein and (B) any and all Second Liens on any Collateral.

(c) It is acknowledged that, subject to the Priority Lien Cap as provided herein, (i) the aggregate amount of the Priority Lien Obligations may be increased from time to time

pursuant to the terms of the Priority Lien Documents, (ii) a portion of the Priority Lien Obligations consists or may consist of indebtedness that is revolving in nature, and the amount thereof that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed, and (iii) (A) the Priority Lien Documents may be replaced, restated, supplemented, restructured or otherwise amended or modified from time to time and (B) the Priority Lien Obligations may be increased, extended, renewed, replaced, restated, supplemented, restructured, repaid, refunded, refinanced or otherwise amended or modified from time to time, in the case of the foregoing (A) and (B) all without affecting the subordination of the Second Liens or Third Liens hereunder or the provisions of this Agreement defining the relative rights of the Priority Lien Secured Parties, the Second Lien Secured Parties and the Third Lien Secured Parties. The lien priorities provided for herein shall not be altered or otherwise affected by any amendment, modification, supplement, extension, increase, renewal, restatement or Replacement of either the Priority Lien Obligations (or any part thereof), the Second Lien Obligations (or any part thereof) or the Third Lien Obligations (or any part thereof), by the release of any Collateral or of any guarantees for any Priority Lien Obligations or by any action that any Secured Debt Representative or Secured Party may take or fail to take in respect of any Collateral.

Section 2.02 Prohibition on Marshalling, Etc. (a) Until the Discharge of Priority Lien Obligations, the Second Lien Collateral Trustee will not assert any marshalling, appraisal, valuation, or other similar right that may otherwise be available to a junior secured creditor.

(b) Until the Discharge of Priority Lien Obligations and the Discharge of Second Lien Obligations, the Third Lien Collateral Trustee will not assert any marshalling, appraisal, valuation, or other similar right that may otherwise be available to a junior secured creditor.

Section 2.03 No New Liens. The parties hereto agree that, (a) so long as the Discharge of Priority Lien Obligations has not occurred, none of the Grantors shall, nor shall any Grantor permit any of its subsidiaries to, (i) grant or permit any additional Liens on any asset of such Grantor or subsidiary to secure any Third Lien Obligation, or take any action to perfect any additional Liens, unless it has granted, or substantially concurrently therewith grants (or offers to grant), a Lien on such asset of such Grantor or subsidiary to secure (A) the Priority Lien Obligations and has taken all actions required to perfect such Liens and (B) the Second Lien Obligations and has taken all actions required to perfect such Liens; provided, however, the refusal or inability of the Priority Lien Agent or the Second Lien Collateral Trustee to accept such Lien will not prevent the Third Lien Collateral Trustee from taking the Lien, (ii) grant or permit any additional Liens on any asset of such Grantor or subsidiary to secure any Second Lien Obligation, or take any action to perfect any additional Liens, unless it has granted, or substantially concurrently therewith grants (or offers to grant), a Lien on such asset of such Grantor or subsidiary to secure (A) the Priority Lien Obligations and has taken all actions required to perfect such Liens and (B) the Third Lien Obligations and has taken all actions required to perfect such Liens; provided, however, the refusal or inability of the Priority Lien Agent or the Third Lien Collateral Trustee to accept such Lien will not prevent the Second Lien Collateral Trustee from taking the Lien or (iii) grant or permit any additional Liens on any asset of such Grantor or subsidiary to secure any Priority Lien Obligation, or take any action to perfect any additional Liens, unless it has granted, or substantially concurrently therewith grants (or offers to grant), a Lien on such asset of such Grantor or subsidiary to secure (A) the Second Lien Obligations and has taken all actions required to perfect such Liens and (B) the Third Lien Obligations and has taken all actions required to perfect such Liens; provided, however, the refusal or inability of the Second Lien Collateral Trustee or the Third Lien Collateral Trustee to accept such Lien will not prevent the Priority Lien Agent from taking the Lien and (b) after the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations, none of the Grantors shall, nor shall any Grantor permit any of its subsidiaries to, (i) grant or permit any additional Liens on any asset of such

Grantor or subsidiary to secure any Second Lien Obligation, or take any action to perfect any additional Liens, unless it has granted, or substantially concurrently therewith grants (or offers to grant), a Lien on such asset of such Grantor or subsidiary to secure the Third Lien Obligations; provided, however, the refusal or inability of the Third Lien Collateral Trustee to accept such Lien will not prevent the Second Lien Collateral Trustee from taking the Lien or (ii) grant or permit any additional Liens on any asset of such Grantor or subsidiary to secure any Third Lien Obligations unless it has granted, or substantially concurrently therewith grants (or offers to grant), a Lien on such asset of such Grantor or subsidiary to secure the Second Lien Obligations and has taken all actions required to perfect such Liens; provided, however, the refusal or inability of the Second Lien Collateral Trustee to accept such Lien will not prevent the Third Lien Collateral Trustee from taking the Lien, with each such Lien as described in clauses (a) and (b) of this Section 2.03 to be subject to the provisions of this Agreement. To the extent that the provisions of the immediately preceding sentence are not complied with for any reason, without limiting any other right or remedy available to the Priority Lien Agent, the other Priority Lien Secured Parties, the Second Lien Collateral Trustee or the other Second Lien Secured Parties, each of the Second Lien Collateral Trustee, for itself and on behalf of the other Second Lien Secured Parties and the Third Lien Collateral Trustee, for itself and on behalf of the other Third Lien Secured Parties, agrees that any amounts received by or distributed to any Second Lien Secured Party or Third Lien Secured Party, as applicable, pursuant to or as a result of any Lien granted in contravention of this Section 2.03 shall be subject to Section 3.05(b).

Section 2.04 Similar Collateral and Agreements. The parties hereto acknowledge and agree that it is their intention that the Priority Lien Collateral, the Second Lien Collateral and the Third Lien Collateral be identical. In furtherance of the foregoing, the parties hereto agree (a) to cooperate in good faith in order to determine, upon any reasonable request by the Priority Lien Agent, the Second Lien Collateral Trustee or the Third Lien Collateral Trustee, the specific assets included in the Priority Lien Collateral, the Second Lien Collateral and the Third Lien Collateral, the steps taken to perfect the Priority Liens, the Second Liens and the Third Liens thereon and the identity of the respective parties obligated under the Priority Lien Documents, the Second Lien Documents and the Third Lien Documents in respect of the Priority Lien Obligations, the Second Lien Obligations and the Third Lien Obligations, respectively, (b) that the Second Lien Security Documents creating Liens on the Collateral shall be in all material respects the same forms of documents as the respective Priority Lien Security Documents creating Liens on the Collateral other than (i) with respect to the priority nature of the Liens created thereunder in such Collateral, (ii) such other modifications to such Second Lien Security Documents which are less restrictive than the corresponding Priority Lien Security Documents, (iii) provisions in the Second Lien Security Documents which are solely applicable to the rights and duties of the Second Lien Collateral Trustee and/or the Second Lien Trustee, and (iv) with such deletions or modifications of representations, warranties and covenants as are customary with respect to security documents establishing Liens securing publicly traded debt securities, (c) that the Third Lien Security Documents creating Liens on the Collateral shall be in all material respects the same forms of documents as the respective Priority Lien Security Documents and Second Lien Security Documents creating Liens on the Collateral other than (i) with respect to the priority nature of the Liens created thereunder in such Collateral, (ii) such other modifications to such Third Lien Security Documents which are less restrictive than the corresponding Priority Lien Security Documents and Second Lien Security Documents, (iii) provisions in the Third Lien Security Documents which are solely applicable to the rights and duties of the Third Lien Collateral Trustee, and (iv) with such deletions or modifications of representations, warranties and covenants as are customary with respect to security documents establishing Liens securing publicly traded debt securities, (d) that at no time shall there be any Grantor that is an obligor in respect of the Second Lien Obligations that is not also an obligor in respect of the Priority Lien Obligations or vice versa and (e) that at no time shall there be any Grantor that is an obligor in respect of the Third Lien

Obligations that is not also an obligor in respect of the Priority Lien Obligations and the Second Lien Obligations.

Section 2.05 No Duties of Priority Lien Agent. Each of the Second Lien Collateral Trustee, for itself and on behalf of each Second Lien Secured Party, and the Third Lien Collateral Trustee, for itself and on behalf of each Third Lien Secured Party, acknowledges and agrees that neither the Priority Lien Agent nor any other Priority Lien Secured Party shall have any duties or other obligations to any such Second Lien Secured Party or Third Lien Secured Party with respect to any Collateral, other than to transfer to the Second Lien Collateral Trustee any remaining Collateral and any proceeds of the sale or other Disposition of any such Collateral remaining in its possession following the associated Discharge of Priority Lien Obligations, in each case without representation or warranty on the part of the Priority Lien Agent or any Priority Lien Secured Party. In furtherance of the foregoing, each Second Lien Secured Party and Third Lien Secured Party acknowledges and agrees that until the Discharge of Priority Lien Obligations (subject to the terms of Section 3.02, including the rights of the Second Lien Secured Parties and the Third Lien Secured Parties following the expiration of any applicable Standstill Period), the Priority Lien Agent shall be entitled, for the benefit of the Priority Lien Secured Parties, to sell, transfer or otherwise Dispose of or deal with such Collateral, as provided herein and in the Priority Lien Documents, without regard to (a) any Second Lien or any rights to which the Second Lien Collateral Trustee or any Second Lien Secured Party would otherwise be entitled as a result of such Second Lien or (b) any Third Lien or any rights to which the Third Lien Collateral Trustee or any Third Lien Secured Party would otherwise be entitled as a result of such Third Lien. Without limiting the foregoing, each Second Lien Secured Party and Third Lien Secured Party agrees that neither the Priority Lien Agent nor any other Priority Lien Secured Party shall have any duty or obligation first to marshal or realize upon any type of Collateral, or to sell, Dispose of or otherwise liquidate all or any portion of such Collateral, in any manner that would maximize the return to the Second Lien Secured Parties or the Third Lien Secured Parties, notwithstanding that the order and timing of any such realization, sale, Disposition or liquidation may affect the amount of proceeds actually received by the Second Lien Secured Parties or the Third Lien Secured Parties, as applicable, from such realization, sale, Disposition or liquidation. Each of the Second Lien Secured Parties and Third Lien Secured Parties waives any claim such Second Lien Secured Party or Third Lien Secured Party may now or hereafter have against the Priority Lien Agent or any other Priority Lien Secured Party arising out of any actions which the Priority Lien Agent or any other Priority Lien Secured Parties take or omit to take (including actions with respect to the creation, perfection or continuation of Liens on any Collateral, actions with respect to the foreclosure upon, sale, release or depreciation of, or failure to realize upon, any of the Collateral, and actions with respect to the collection of any claim for all or any part of the Priority Lien Obligations from any account debtor, guarantor or any other party) in accordance with this Agreement and the Priority Lien Documents or the valuation, use, protection or release of any security for the Priority Lien Obligations.

Section 2.06 No Duties of Second Lien Collateral Trustee. The Third Lien Collateral Trustee, for itself and on behalf of each Third Lien Secured Party, acknowledges and agrees that neither the Second Lien Collateral Trustee nor any other Second Lien Secured Party shall have any duties or other obligations to such Third Lien Secured Party with respect to any Collateral, other than to transfer to the Third Lien Collateral Trustee any remaining Collateral and any proceeds of the sale or other Disposition of any such Collateral remaining in its possession following the associated Discharge of Second Lien Obligations (provided such discharge of Second Lien Obligations occurs after the Discharge of Priority Lien Obligations), in each case without representation or warranty on the part of the Second Lien Collateral Trustee or any Second Lien Secured Party. In furtherance of the foregoing, each Third Lien Secured Party acknowledges and agrees that after the Discharge of Priority Lien Obligations and until the Discharge of Second Lien Obligations (subject to the terms of Section 3.02, including the rights

of the Third Lien Secured Parties following expiration of the Third Lien Second Standstill Period), the Second Lien Collateral Trustee shall be entitled, for the benefit of the Second Lien Secured Parties, to sell, transfer or otherwise Dispose of or deal with such Collateral, as provided herein and in the Second Lien Documents, without regard to any Third Lien or any rights to which the Third Lien Collateral Trustee or any Third Lien Secured Party would otherwise be entitled as a result of such Third Lien. Without limiting the foregoing, each Third Lien Secured Party agrees that neither the Second Lien Collateral Trustee nor any other Second Lien Secured Party shall have any duty or obligation first to marshal or realize upon any type of Collateral, or to sell, Dispose of or otherwise liquidate all or any portion of such Collateral, in any manner that would maximize the return to the Third Lien Secured Parties, notwithstanding that the order and timing of any such realization, sale, Disposition or liquidation may affect the amount of proceeds actually received by the Third Lien Secured Parties from such realization, sale, Disposition or liquidation. Following the Discharge of Second Lien Obligations, the Third Lien Collateral Trustee and the other Third Lien Secured Parties may, subject to any other agreements binding on the Third Lien Collateral Trustee or such other Third Lien Secured Parties, assert their rights under the New York UCC or otherwise to any proceeds remaining following a sale, Disposition or other liquidation of Collateral by, or on behalf of the Third Lien Secured Parties. Each of the Third Lien Secured Parties waives any claim such Third Lien Secured Party may now or hereafter have against the Second Lien Collateral Trustee or any other Second Lien Secured Party arising out of any actions which the Second Lien Collateral Trustee or the Second Lien Secured Parties take or omit to take (including actions with respect to the creation, perfection or continuation of Liens on any Collateral, actions with respect to the foreclosure upon, sale, release or depreciation of, or failure to realize upon, any of the Collateral, and actions with respect to the collection of any claim for all or any part of the Second Lien Obligations from any account debtor, guarantor or any other party) in accordance with this Agreement and the Second Lien Documents or the valuation, use, protection or release of any security for the Second Lien Obligations.

ARTICLE III
ENFORCEMENT RIGHTS; PURCHASE OPTION

Section 3.01 Limitation on Enforcement Action. (a) Prior to the Discharge of Priority Lien Obligations, each of the Second Lien Collateral Trustee, for itself and on behalf of each Second Lien Secured Party, and the Third Lien Collateral Trustee, for itself and on behalf of each Third Lien Secured Party, hereby agrees that, subject to Section 3.05(b) and Section 4.07, none of the Second Lien Collateral Trustee, any other Second Lien Secured Party, the Third Lien Collateral Trustee or any other Third Lien Secured Party shall commence any judicial or nonjudicial foreclosure proceedings with respect to, seek to have a trustee, receiver, liquidator or similar official appointed for or over, attempt any action to take possession of, exercise any right, remedy or power with respect to, or otherwise take any action to enforce its interest in or realize upon, or take any other action available to it in respect of, any Collateral under any Second Lien Security Document or Third Lien Security Document, as applicable, applicable law or otherwise (including but not limited to any right of setoff), it being agreed that only the Priority Lien Agent, acting in accordance with the applicable Priority Lien Documents, shall have the exclusive right (and whether or not any Insolvency or Liquidation Proceeding has been commenced), to take any such actions or exercise any such remedies, in each case, without any consultation with or the consent of the Second Lien Collateral Trustee, any other Second Lien Secured Party, the Third Lien Collateral Trustee or any other Third Lien Secured Party. In exercising rights and remedies with respect to the Collateral, the Priority Lien Agent and the other Priority Lien Secured Parties may enforce the provisions of the Priority Lien Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in their sole discretion and regardless of whether such exercise and enforcement is adverse to the interest of any Second Lien Secured Party or Third Lien Secured Party. Such exercise and

enforcement shall include the rights of an agent appointed by them to Dispose of Collateral upon foreclosure, to incur expenses in connection with any such Disposition and to exercise all the rights and remedies of a secured creditor under the Uniform Commercial Code, the Bankruptcy Code or any other Bankruptcy Law and any other applicable laws. Without limiting the generality of the foregoing, the Priority Lien Agent will have the exclusive right to deal with that portion of the Collateral consisting of deposit accounts and securities accounts and commodities accounts (collectively "Accounts"), including exercising rights under control agreements with respect to such Accounts. Each of the Second Lien Collateral Trustee, for itself and on behalf of the other Second Lien Secured Parties and the Third Lien Collateral Trustee, for itself and on behalf of the other Third Lien Secured Parties, hereby acknowledges and agrees that no covenant, agreement or restriction contained in any Second Lien Security Document, any other Second Lien Document, any Third Lien Security Document or any other Third Lien Document, as applicable, shall be deemed to restrict in any way the rights and remedies of the Priority Lien Agent or the other Priority Lien Secured Parties with respect to the Collateral as set forth in this Agreement. Notwithstanding the foregoing, subject to Section 3.05, each of the Second Lien Collateral Trustee, on behalf of the Second Lien Secured Parties, and the Third Lien Collateral Trustee, on behalf of the Third Lien Secured Parties, may, but will have no obligation to, take all such actions (not adverse to the Priority Liens or the rights of the Priority Lien Agent and the Priority Lien Secured Parties) it deems necessary to perfect or continue the perfection of the Second Liens in the Collateral or to create, preserve or protect (but not enforce) the Second Liens in the Collateral or to perfect or continue the perfection of the Third Liens in the Collateral or to create, preserve or protect (but not enforce) the Third Liens in the Collateral, as applicable. Nothing herein shall limit the right or ability of the Second Lien Secured Parties or any Third Lien Secured Parties to (i) purchase (by credit bid or otherwise) all or any portion of the Collateral in connection with any enforcement of remedies by the Priority Lien Agent to the extent that, and so long as, the Priority Lien Secured Parties receive payment in full in cash of all Priority Lien Obligations after giving effect thereto or (ii) file a proof of claim with respect to the Second Lien Obligations or the Third Lien Obligations, as applicable.

(b) Following the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations, the Third Lien Collateral Trustee, for itself and on behalf of each Third Lien Secured Party, hereby agrees that, subject to Section 3.05(b) and Section 4.07, neither the Third Lien Collateral Trustee nor any other Third Lien Secured Party shall commence any judicial or nonjudicial foreclosure proceedings with respect to, seek to have a trustee, receiver, liquidator or similar official appointed for or over, attempt any action to take possession of, exercise any right, remedy or power with respect to, or otherwise take any action to enforce its interest in or realize upon, or take any other action available to it in respect of, any Collateral under any Third Lien Security Document, applicable law or otherwise (including but not limited to any right of setoff), it being agreed that only the Second Lien Collateral Trustee, acting in accordance with the applicable Second Lien Documents, shall have the exclusive right (and whether or not any Insolvency or Liquidation Proceeding has been commenced), to take any such actions or exercise any such remedies, in each case, without any consultation with or the consent of the Third Lien Collateral Trustee or any other Third Lien Secured Party. In exercising rights and remedies with respect to the Collateral following the Discharge of Priority Lien Obligations and until the Discharge of Second Lien Obligations, the Second Lien Collateral Trustee and the other Second Lien Secured Parties may enforce the provisions of the Second Lien Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in their sole discretion and regardless of whether such exercise and enforcement is adverse to the interest of any Third Lien Secured Party. Such exercise and enforcement following the Discharge of Priority Lien Obligations and until the Discharge of Second Lien Obligations, shall include the rights of an agent appointed by them to Dispose of Collateral upon foreclosure, to incur expenses in connection with any such Disposition and to exercise all the rights and remedies of a secured creditor under the Uniform Commercial Code, the

Bankruptcy Code or any other Bankruptcy Law and any other applicable laws. Without limiting the generality of the foregoing, following the Discharge of Priority Lien Obligations and until the Discharge of Second Lien Obligations, the Second Lien Collateral Trustee will have the exclusive right to deal with the Accounts, including exercising rights under control agreements with respect to such Accounts. The Third Lien Collateral Trustee, for itself and on behalf of the other Third Lien Secured Parties, hereby acknowledges and agrees that no covenant, agreement or restriction contained in any Third Lien Security Document or any other Third Lien Document shall be deemed to restrict in any way the rights and remedies of the Second Lien Collateral Trustee or the other Second Lien Secured Parties with respect to the Collateral as set forth in this Agreement. Notwithstanding the foregoing, subject to Section 3.05, the Third Lien Collateral Trustee may, but will have no obligation to, on behalf of the Third Lien Secured Parties, take all such actions (not adverse to the Second Liens or the rights of the Second Lien Collateral Trustee and the Second Lien Secured Parties) it deems necessary to perfect or continue the perfection of the Third Liens in the Collateral or to create, preserve or protect (but not enforce) the Third Liens in the Collateral.

Section 3.02 Standstill Periods; Permitted Enforcement Action. (a) Prior to the Discharge of Priority Lien Obligations and notwithstanding the foregoing Section 3.01, both before and during an Insolvency or Liquidation Proceeding:

(i) after a period of 180 days has elapsed (which period will be tolled during any period in which the Priority Lien Agent is not entitled, on behalf of the Priority Lien Secured Parties, to enforce or exercise any rights or remedies with respect to any Collateral as a result of (A) any injunction issued by a court of competent jurisdiction or (B) the automatic stay or any other stay or prohibition in any Insolvency or Liquidation Proceeding) since the date on which the Second Lien Collateral Trustee has delivered to the Priority Lien Agent written notice of the acceleration of any Second Lien Debt (the "Second Lien Standstill Period"), the Second Lien Collateral Trustee and the other Second Lien Secured Parties may enforce or exercise any rights or remedies with respect to any Collateral; provided, however that, notwithstanding the expiration of the Second Lien Standstill Period or anything in the Second Lien Collateral Trust Agreement or the Second Lien Documents to the contrary, in no event may the Second Lien Collateral Trustee or any other Second Lien Secured Party enforce or exercise any rights or remedies with respect to any Collateral, or commence, join with any Person at any time in commencing, or petition for or vote in favor of any resolution for, any such action or proceeding, if the Priority Lien Agent on behalf of the Priority Lien Secured Parties or any other Priority Lien Secured Party shall have commenced, and shall be diligently pursuing (or shall have sought or requested relief from, or modification of, the automatic stay or any other stay or other prohibition in any Insolvency or Liquidation Proceeding to enable the commencement and pursuit thereof), the enforcement or exercise of any rights or remedies with respect to the Collateral or any such action or proceeding (prompt written notice thereof to be given to the Second Lien Representatives by the Priority Lien Agent); provided, further, that, at any time after the expiration of the Second Lien Standstill Period, if neither the Priority Lien Agent nor any other Priority Lien Secured Party shall have commenced and be diligently pursuing (or shall have sought or requested relief from, or modification of, the automatic stay or any other stay or other prohibition in any Insolvency or Liquidation Proceeding to enable the commencement and pursuit thereof) the enforcement or exercise of any rights or remedies with respect to any material portion of the Collateral or any such action or proceeding, and the Second Lien Collateral Trustee shall have commenced the enforcement or exercise of any rights or remedies with respect to any material portion of the Collateral or any such action or proceeding, then for so long as the Second Lien Collateral Trustee is diligently pursuing such rights or remedies, none of any Priority Lien Secured Party, the Priority Lien Agent, any Third Lien Secured Party or the Third Lien Collateral Trustee shall take any action of a similar

nature with respect to such Collateral, or commence, join with any Person at any time in commencing, or petition for or vote in favor of any resolution for, any such action or proceeding; and

(ii) after a period of 270 days has elapsed (which period will be tolled during any period in which the Priority Lien Agent is not entitled, on behalf of the Priority Lien Secured Parties, to enforce or exercise any rights or remedies with respect to any Collateral as a result of (A) any injunction issued by a court of competent jurisdiction or (B) the automatic stay or any other stay or prohibition in any Insolvency or Liquidation Proceeding) since the date on which the Third Lien Collateral Trustee has delivered to the Priority Lien Agent and the Second Lien Trustee written notice of the acceleration of any Third Lien Debt (the "Third Lien First Standstill Period"), the Third Lien Collateral Trustee and the other Third Lien Secured Parties may enforce or exercise any rights or remedies with respect to any Collateral; provided, however, that notwithstanding the expiration of the Third Lien First Standstill Period or anything in the Third Lien Collateral Trust Agreement or the Third Lien Documents to the contrary, in no event may the Third Lien Collateral Trustee or any other Third Lien Secured Party enforce or exercise any rights or remedies with respect to any Collateral, or commence, join with any Person at any time in commencing, or petition for or vote in favor of any resolution for, any such action or proceeding, if (I) the Priority Lien Agent on behalf of the Priority Lien Secured Parties or any other Priority Lien Secured Party or (II) the Second Lien Collateral Trustee on behalf of the Second Lien Secured Parties or any other Second Lien Secured Party shall have commenced, and shall be diligently pursuing (or shall have sought or requested relief from, or modification of, the automatic stay or any other stay in any Insolvency or Liquidation Proceeding to enable the commencement and pursuit thereof), the enforcement or exercise of any rights or remedies with respect to the Collateral or any such action or proceeding (prompt written notice thereof to be given to the Third Lien Representatives by the Priority Lien Agent or the Second Lien Collateral Trustee, as applicable); provided, further, that, at any time after the expiration of the Third Lien First Standstill Period, if none of any Priority Lien Secured Party, the Priority Lien Agent, any Second Lien Secured Party or the Second Lien Collateral Trustee shall have commenced and be diligently pursuing the enforcement or exercise of any rights or remedies with respect to any material portion of the Collateral or any such action or proceeding, and the Third Lien Collateral Trustee shall have commenced the enforcement or exercise of any rights or remedies with respect to any material portion of the Collateral or any such action or proceeding, then for so long as the Third Lien Collateral Trustee is diligently pursuing such rights or remedies, none of any Priority Lien Secured Party, the Priority Lien Agent, any Second Lien Secured Party or the Second Lien Collateral Trustee shall take any action of a similar nature with respect to such Collateral, or commence, join with any Person at any time in commencing, or petition for or vote in favor of any resolution for, any such action or proceeding.

(b) Following the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations and notwithstanding the foregoing Section 3.01, both before and during an Insolvency or Liquidation Proceeding, after a period of 180 days has elapsed (which period will be tolled during any period in which the Second Lien Collateral Trustee is not entitled, on behalf of the Second Lien Secured Parties, to enforce or exercise any rights or remedies with respect to any Collateral as a result of (A) any injunction issued by a court of competent jurisdiction or (B) the automatic stay or any other stay in any Insolvency or Liquidation Proceeding) since the date on which the Third Lien Collateral Trustee has delivered to the Second Lien Collateral Trustee written notice of the acceleration of any Third Lien Debt (the "Third Lien Second Standstill Period"), the Third Lien Collateral Trustee and the other Third Lien Secured Parties may enforce or exercise any rights or remedies with respect to any Collateral; provided, however, that notwithstanding the expiration of the Third Lien Second Standstill Period or anything in the Third Lien Collateral Trust Agreement or the Third Lien Documents to the contrary, in no event may the Third Lien Collateral Trustee or any other Third Lien Secured Party enforce or exercise

any rights or remedies with respect to any Collateral, or commence, join with any Person at any time in commencing, or petition for or vote in favor of any resolution for, any such action or proceeding, if the Second Lien Collateral Trustee on behalf of the Second Lien Secured Parties or any other Second Lien Secured Party shall have commenced, and shall be diligently pursuing (or shall have sought or requested relief from, or modification of, the automatic stay or any other stay in any Insolvency or Liquidation Proceeding to enable the commencement and pursuit thereof), the enforcement or exercise of any rights or remedies with respect to the Collateral or any such action or proceeding (prompt written notice thereof to be given to the Third Lien Representatives by the Second Lien Collateral Trustee); provided, further, that, at any time after the expiration of the Third Lien Second Standstill Period, if neither the Second Lien Collateral Trustee nor any other Second Lien Secured Party shall have commenced and be diligently pursuing the enforcement or exercise of any rights or remedies with respect to any material portion of the Collateral or any such action or proceeding, and the Third Lien Collateral Trustee shall have commenced the enforcement or exercise of any rights or remedies with respect to any material portion of the Collateral or any such action or proceeding, then for so long as the Third Lien Collateral Trustee is diligently pursuing such rights or remedies, neither any Second Lien Secured Party nor the Second Lien Collateral Trustee shall take any action of a similar nature with respect to such Collateral, or commence, join with any Person at any time in commencing, or petition for or vote in favor of any resolution for, any such action or proceeding.

Section 3.03 Insurance. (a) Unless and until the Discharge of Priority Lien Obligations has occurred (subject to the terms of Section 3.02, including the rights of the Second Lien Secured Parties and the Third Lien Secured Parties following expiration of any applicable Standstill Period), the Priority Lien Agent shall have the sole and exclusive right, subject to the rights of the Grantors under the Priority Lien Documents, to adjust and settle claims in respect of Collateral under any insurance policy in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) affecting the Collateral. Unless and until the Discharge of Priority Lien Obligations has occurred, and subject to the rights of the Grantors under the Priority Lien Documents, all proceeds of any such policy and any such award (or any payments with respect to a deed in lieu of condemnation) in respect of the Collateral shall be paid to the Priority Lien Agent pursuant to the terms of the Priority Lien Documents (including for purposes of cash collateralization of commitments, letters of credit and Hedging Obligations). If, prior to the Discharge of Priority Lien Obligations, the Second Lien Collateral Trustee, any Second Lien Secured Party, the Third Lien Collateral Trustee or any Third Lien Secured Party shall, at any time, receive any proceeds of any such insurance policy or any such award or payment in contravention of the foregoing, it shall pay such proceeds over to the Priority Lien Agent. In addition, if by virtue of being named as an additional insured or loss payee of any insurance policy of any Grantor covering any of the Collateral, the Second Lien Collateral Trustee, any other Second Lien Secured Party, the Third Lien Collateral Trustee or any other Third Lien Secured Party shall have the right to adjust or settle any claim under any such insurance policy, then unless and until the Discharge of Priority Lien Obligations has occurred, the Second Lien Collateral Trustee, any such Second Lien Secured Party, the Third Lien Collateral Trustee and any such Third Lien Secured Party shall follow the instructions of the Priority Lien Agent, or of the Grantors under the Priority Lien Documents to the extent the Priority Lien Documents grant such Grantors the right to adjust or settle such claims, with respect to such adjustment or settlement (subject to the terms of Section 3.02, including the rights of the Second Lien Secured Parties and the Third Lien Secured Parties following expiration of any applicable Standstill Period).

(b) Following the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations (subject to the terms of Section 3.02, including the rights of the Third Lien Secured Parties following expiration of the Third Lien Second Standstill Period), the Second Lien

Collateral Trustee shall have the sole and exclusive right, subject to the rights of the Grantors under the Second Lien Documents, to adjust and settle claims in respect of Collateral under any insurance policy in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) affecting the Collateral. Unless and until the Discharge of Second Lien Obligations has occurred, and subject to the rights of the Grantors under the Second Lien Documents, all proceeds of any such policy and any such award (or any payments with respect to a deed in lieu of condemnation) in respect of the Collateral shall be paid to the Second Lien Collateral Trustee pursuant to the terms of the Second Lien Documents and, after the Discharge of Second Lien Obligations has occurred, to the Third Lien Collateral Trustee to the extent required under the Third Lien Documents and then, to the extent no Third Lien Obligations are outstanding, to the owner of the subject property, to such other Person as may be entitled thereto or as a court of competent jurisdiction may otherwise direct. If the Third Lien Collateral Trustee or any Third Lien Secured Party shall, at any time following the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations, receive any proceeds of any such insurance policy or any such award or payment in contravention of the foregoing, it shall pay such proceeds over to the Second Lien Collateral Trustee. In addition, if by virtue of being named as an additional insured or loss payee of any insurance policy of any Grantor covering any of the Collateral, the Third Lien Collateral Trustee or any other Third Lien Secured Party shall have the right to adjust or settle any claim under any such insurance policy, then unless and until the Discharge of Second Lien Obligations has occurred, the Third Lien Collateral Trustee and any such Third Lien Secured Party shall follow the instructions of the Second Lien Collateral Trustee, or of the Grantors under the Second Lien Documents to the extent the Second Lien Documents grant such Grantors the right to adjust or settle such claims, with respect to such adjustment or settlement (subject to the terms of Section 3.02, including the rights of the Third Lien Secured Parties following expiration of the Third Lien Second Standstill Period).

Section 3.04 Notification of Release of Collateral. Each of the Priority Lien Agent, the Second Lien Collateral Trustee and the Third Lien Collateral Trustee shall give the other Secured Debt Representatives prompt written notice of the Disposition by it of, and Release by it of the Lien on, any Collateral. Such notice shall describe in reasonable detail the subject Collateral, the parties involved in such Disposition or Release, the place, time, manner and method thereof, and the consideration, if any, received therefor; provided, however, that the failure to give any such notice shall not in and of itself in any way impair the effectiveness of any such Disposition or Release.

Section 3.05 No Interference; Payment Over.

(a) No Interference. (i) The Second Lien Collateral Trustee, for itself and on behalf of each Second Lien Secured Party, agrees that each Second Lien Secured Party (i) will not take or cause to be taken any action the purpose or effect of which is, or could be, to make any Second Lien *pari passu* with, or to give such Second Lien Secured Party any preference or priority relative to, any Priority Lien with respect to the Collateral or any part thereof, (ii) will not challenge or question in any proceeding the validity or enforceability of any Priority Lien Obligations or Priority Lien Document, or the validity, attachment, perfection or priority of any Priority Lien, or the validity or enforceability of the priorities, rights or duties established by the provisions of this Agreement, (iii) will not take or cause to be taken any action the purpose or effect of which is, or could be, to interfere, hinder or delay, in any manner, whether by judicial proceedings or otherwise, any sale, transfer or other Disposition of the Collateral by any Priority Lien Secured Party or the Priority Lien Agent acting on their behalf, (iv) shall have no right to (A) direct the Priority Lien Agent or any other Priority Lien Secured Party to exercise any right, remedy or power with respect to any Collateral or (B) consent to the exercise by the Priority Lien Agent or any other Priority Lien Secured Party of any right, remedy or power with respect to any

Collateral, (v) will not institute any suit or assert in any suit or Insolvency or Liquidation Proceeding any claim against the Priority Lien Agent or other Priority Lien Secured Party seeking damages from or other relief by way of specific performance, instructions or otherwise with respect to, and neither the Priority Lien Agent nor any other Priority Lien Secured Party shall be liable for, any action taken or omitted to be taken by the Priority Lien Agent or other Priority Lien Secured Party with respect to any Priority Lien Collateral, (vi) will not seek, and hereby waives any right, to have any Collateral or any part thereof marshaled upon any foreclosure or other Disposition of such Collateral, (vii) will not attempt, directly or indirectly, whether by judicial proceedings or otherwise, to challenge the enforceability of any provision of this Agreement, (viii) will not object to forbearance by the Priority Lien Agent or any other Priority Lien Secured Party, and (ix) will not assert, and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or claim the benefit of any marshalling, appraisal, valuation or other similar right that may be available under applicable law with respect to the Collateral or any similar rights a junior secured creditor may have under applicable law; and

(ii) The Third Lien Collateral Trustee, for itself and on behalf of each Third Lien Secured Party, agrees that each Third Lien Secured Party (i) will not take or cause to be taken any action the purpose or effect of which is, or could be, to make any Third Lien *pari passu* with, or to give such Third Lien Secured Party any preference or priority relative to, any Priority Lien or Second Lien with respect to the Collateral or any part thereof, (ii) will not challenge or question in any proceeding the validity or enforceability of any Priority Lien Obligations, Priority Lien Document, Second Lien Obligations or Second Lien Document, or the validity, attachment, perfection or priority of any Priority Lien or Second Lien, or the validity or enforceability of the priorities, rights or duties established by the provisions of this Agreement, (iii) will not take or cause to be taken any action the purpose or effect of which is, or could be, to interfere, hinder or delay, in any manner, whether by judicial proceedings or otherwise, any sale, transfer or other Disposition of the Collateral by any Priority Lien Secured Party or the Priority Lien Agent acting on their behalf or by any Second Lien Secured Party or the Second Lien Collateral Trustee acting on their behalf, (iv) shall have no right to (A) direct the Priority Lien Agent, any other Priority Lien Secured Party, the Second Lien Collateral Trustee or any other Second Lien Secured Party to exercise any right, remedy or power with respect to any Collateral or (B) consent to the exercise by the Priority Lien Agent, any other Priority Lien Secured Party, the Second Lien Collateral Trustee or any other Second Lien Secured Party of any right, remedy or power with respect to any Collateral, (v) will not institute any suit or assert in any suit or Insolvency or Liquidation Proceeding any claim against the Priority Lien Agent, any other Priority Lien Secured Party, the Second Lien Collateral Trustee or any other Second Lien Secured Party seeking damages from or other relief by way of specific performance, instructions or otherwise with respect to, and none of the Priority Lien Agent, any other Priority Lien Secured Party, the Second Lien Collateral Trustee or any other Second Lien Secured Party shall be liable for, any action taken or omitted to be taken by the Priority Lien Agent, any other Priority Lien Secured Party, the Second Lien Collateral Trustee or any other Second Lien Secured Party with respect to any Priority Lien Collateral or Second Lien Collateral, as applicable, (vi) will not seek, and hereby waives any right, to have any Collateral or any part thereof marshaled upon any foreclosure or other Disposition of such Collateral, (vii) will not attempt, directly or indirectly, whether by judicial proceedings or otherwise, to challenge the enforceability of any provision of this Agreement, (viii) will not object to forbearance by the Priority Lien Agent, any other Priority Lien Secured Party, the Second Lien Collateral Trustee or any other Second Lien Secured Party and (ix) will not assert, and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or claim the benefit of any marshalling, appraisal, valuation or other similar right that may be available under applicable law with respect to the Collateral or any similar rights a junior secured creditor may have under applicable law.

(b) Payment Over. (i) Each of the Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party, and the Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, hereby agrees that if any Second Lien Secured Party or Third Lien Secured Party, as applicable, shall obtain possession of any Collateral or shall realize any proceeds or payment in respect of any Collateral, pursuant to the exercise of any rights or remedies with respect to the Collateral under any Second Lien Security Document or Third Lien Security Document, as applicable, or by the exercise of any rights available to it under applicable law or in any Insolvency or Liquidation Proceeding, to the extent permitted hereunder, at any time prior to the Discharge of Priority Lien Obligations secured, or intended to be secured, by such Collateral, then it shall hold such Collateral, proceeds or payment in trust for the Priority Lien Agent and the other Priority Lien Secured Parties and transfer such Collateral, proceeds or payment, as the case may be, to the Priority Lien Agent as promptly as practicable. Furthermore, prior to the Discharge of Priority Lien Obligations, the Second Lien Collateral Trustee or the Third Lien Collateral Trustee, as applicable, shall, at the Grantors' expense, promptly send written notice to the Priority Lien Agent upon receipt of such Collateral, proceeds or payment by any Second Lien Secured Party or Third Lien Secured Party, as applicable, and if directed by the Priority Lien Agent within five (5) days after receipt by the Priority Lien Agent of such written notice, shall deliver such Collateral, proceeds or payment to the Priority Lien Agent in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. The Priority Lien Agent is hereby authorized to make any such endorsements as agent for the Second Lien Collateral Trustee, any other Second Lien Secured Party, the Third Lien Collateral Trustee or any other Third Lien Secured Party, as applicable. Each of the Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party, and the Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, agrees that if, at any time, it obtains written notice that all or part of any payment with respect to any Priority Lien Obligations previously made shall be rescinded for any reason whatsoever, it will reasonably promptly pay over to the Priority Lien Agent any payment received by it and then in its possession or under its direct control in respect of any such Priority Lien Collateral and shall reasonably promptly turn any such Collateral then held by it over to the Priority Lien Agent, and the provisions set forth in this Agreement will be reinstated as if such payment had not been made, until the Discharge of Priority Lien Obligations. All Second Liens and all Third Liens will remain attached to and enforceable against all proceeds so held or remitted, subject to the priorities set forth in this Agreement. Anything contained herein to the contrary notwithstanding, this Section 3.05(b) shall not apply to any proceeds of Collateral realized in a transaction not prohibited by the Priority Lien Documents and as to which the possession or receipt thereof by the Second Lien Collateral Trustee, any other Second Lien Secured Party, the Third Lien Collateral Trustee or any other Third Lien Secured Party, as applicable, is otherwise permitted by the Priority Lien Documents.

(ii) The Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, hereby agrees that if any Third Lien Secured Party shall obtain possession of any Collateral or shall realize any proceeds or payment in respect of any Collateral, pursuant to the exercise of any rights or remedies with respect to the Collateral under any Third Lien Security Document or by the exercise of any rights available to it under applicable law or in any Insolvency or Liquidation Proceeding, to the extent permitted hereunder, at any time following the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations secured, or intended to be secured, by such Collateral, then it shall hold such Collateral, proceeds or payment in trust for the Second Lien Collateral Trustee and the other Second Lien Secured Parties and transfer such Collateral, proceeds or payment, as the case may be, to the Second Lien Collateral Trustee reasonably as promptly as practical. Furthermore, at any time following the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations, the Third Lien Collateral Trustee shall, at the Grantors' expense, promptly send written notice to the Second Lien Collateral Trustee upon receipt of

such Collateral, proceeds or payment by any Third Lien Secured Party, and if directed by the Second Lien Collateral Trustee within five (5) days after receipt by the Second Lien Collateral Trustee of such written notice, shall deliver such Collateral, proceeds or payment to the Second Lien Collateral Trustee in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. The Second Lien Collateral Trustee is hereby authorized to make any such endorsements as agent for the Third Lien Collateral Trustee or any other Third Lien Secured Party. The Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, agrees that if, at any time, it obtains written notice that all or part of any payment with respect to any Second Lien Obligations previously made shall be rescinded for any reason whatsoever, it will promptly pay over to the Second Lien Collateral Trustee any payment received by it and then in its possession or under its direct control in respect of any such Second Lien Collateral and shall promptly turn any such Collateral then held by it over to the Second Lien Collateral Trustee, and the provisions set forth in this Agreement will be reinstated as if such payment had not been made, until the Discharge of Second Lien Obligations. All Third Liens will remain attached to and enforceable against all proceeds so held or remitted, subject to the priorities set forth in this Agreement. Anything contained herein to the contrary notwithstanding, this Section 3.05(b) shall not apply to any proceeds of Collateral realized in a transaction not prohibited by the Second Lien Documents and as to which the possession or receipt thereof by the Third Lien Collateral Trustee or any other Third Lien Secured Party is otherwise permitted by the Second Lien Documents.

Section 3.06 Purchase Option.

(a) Notwithstanding anything in this Agreement to the contrary, on or at any time after (i) the commencement of an Insolvency or Liquidation Proceeding or (ii) the acceleration of the Priority Lien Obligations, each of the holders of the Second Lien Debt and each of their respective designated Affiliates (the "Second Lien Purchasers") will have the right, at their sole option and election (but will not be obligated), at any time upon prior written notice to the Priority Lien Agent, to purchase from the Priority Lien Secured Parties all (but not less than all) (A) Priority Lien Obligations (including unfunded commitments) other than any Priority Lien Obligations constituting Excess Priority Lien Obligations and (B) if applicable, loans (including principal, unpaid interest, fees, reasonable attorneys' fees and legal expenses, but excluding contingent indemnification and reimbursement obligations for which no claim or demand for payment has been made at or prior to such time) provided by any of the Priority Lien Secured Parties in connection with a DIP Financing that are outstanding on the date of such purchase. Promptly following the receipt of such notice, the Priority Lien Agent will deliver to the Second Lien Trustee a statement of the amount of Priority Lien Debt, other Priority Lien Obligations (other than any Priority Lien Obligations constituting Excess Priority Lien Obligations) and DIP Financing (including unpaid interest, fees and expenses and other obligations in respect of such DIP Financing, but excluding contingent indemnification and reimbursement obligations for which no claim or demand for payment has been made at or prior to such time) provided by any of the Priority Lien Secured Parties, if any, then outstanding and the amount of the cash collateral requested by the Priority Lien Agent to be delivered pursuant to Section 3.06(b)(ii) below. The right to purchase provided for in this Section 3.06 will expire unless, within 10 Business Days after the receipt by the Second Lien Trustee of such notice from the Priority Lien Agent, the Second Lien Trustee delivers to the Priority Lien Agent an irrevocable commitment of the Second Lien Purchasers to purchase all (but not less than all) of (A) the Priority Lien Obligations (including unfunded commitments) other than any Priority Lien Obligations constituting Excess Priority Lien Obligations and (B) if applicable, loans (including principal, unpaid interest, fees, reasonable attorneys' fees and legal expenses, but excluding contingent indemnification and reimbursement obligations for which no claim or demand for payment has been made at or prior to such time) provided by any of the Priority Lien Secured Parties in connection with a DIP Financing and to otherwise complete such purchase on the terms set forth under this Section 3.06.

(b) On the date specified by the Second Lien Trustee (on behalf of the Second Lien Purchasers) in such irrevocable commitment (which shall not be less than five Business Days nor more than 20 Business Days, after the receipt by the Priority Lien Agent of such irrevocable commitment), the Priority Lien Secured Parties shall sell to the Second Lien Purchasers all (but not less than all) (A) Priority Lien Obligations (including unfunded commitments) other than any Priority Lien Obligations constituting Excess Priority Lien Obligations and (B) any loans (including unpaid interest, fees and expenses and other obligations in respect of such DIP Financing, but excluding contingent indemnification and reimbursement obligations for which no claim or demand for payment has been made at or prior to such time) provided by any of the Priority Lien Secured Parties in connection with a DIP Financing that are outstanding on the date of such sale, subject to any required approval of any Governmental Authority then in effect, if any, and only if on the date of such sale, the Priority Lien Agent receives the following:

(i) payment in cash, as the purchase price for all Priority Lien Obligations sold in such sale, of an amount equal to the full par value amount of all (A) Priority Lien Obligations (other than outstanding letters of credit as referred to in clause (ii) below) other than any Priority Lien Obligations constituting Excess Priority Lien Obligations and (B) if applicable, all loans (including principal, unpaid interest, fees, reasonable attorneys' fees and legal expenses, but excluding contingent indemnification and reimbursement obligations for which no claim or demand for payment has been made at or prior to such time) provided by any of the Priority Lien Secured Parties in connection with a DIP Financing then outstanding; provided that in the case of Hedging Obligations that constitute Priority Lien Obligations the Second Lien Purchasers shall cause the applicable agreements governing such Hedging Obligations to be assigned and novated or, if such agreements have been terminated, such purchase price shall include an amount equal to the sum of any unpaid amounts then due in respect of such Hedging Obligations, calculated using the market quotation method and after giving effect to any netting arrangements;

(ii) a cash collateral deposit in such amount as the Priority Lien Agent determines is reasonably necessary to secure the payment of any outstanding letters of credit constituting Priority Lien Obligations that may become due and payable after such sale (but not in any event in an amount greater than one hundred and two percent (102%) of the amount then reasonably estimated by the Priority Lien Agent to be the aggregate outstanding amount of such letters of credit at such time), which cash collateral shall be (A) held by the Priority Lien Agent as security solely to reimburse the issuers of such letters of credit that become due and payable after such sale and any fees and expenses incurred in connection with such letters of credit and (B) returned to the Second Lien Trustee (except as may otherwise be required by applicable law or any order of any court or other Governmental Authority) promptly after the expiration or termination from time to time of all payment contingencies affecting such letters of credit; and

(iii) any agreements, documents or instruments that the Priority Lien Agent may reasonably request pursuant to which the Second Lien Trustee and the Second Lien Purchasers in such sale expressly assume and adopt all of the obligations of the Priority Lien Agent and the Priority Lien Secured Parties under the Priority Lien Documents and in connection with loans (including principal, unpaid interest, fees, reasonable attorneys' fees and legal expenses, but excluding contingent indemnification and reimbursement obligations for which no claim or demand for payment has been made at or prior to such time) provided by any of the Priority Lien Secured Parties in connection with a DIP Financing on and after the date of the purchase and sale and the Second Lien Trustee (or any other representative appointed by the holders of a majority in aggregate principal amount of the Second Lien Indenture Notes then outstanding) becomes a successor agent thereunder.

(c) Such purchase of the Priority Lien Obligations (including unfunded commitments) and any loans (including principal, unpaid interest, fees, reasonable attorneys' fees and legal expenses, but excluding contingent indemnification and reimbursement obligations for which no claim or demand for payment has been made at or prior to such time) provided by any of the Priority Lien Secured Parties in connection with a DIP Financing shall be made on a *pro rata* basis among the Second Lien Purchasers giving notice to the Priority Lien Agent of their interest to exercise the purchase option hereunder according to each such Second Lien Purchaser's portion of the Second Lien Debt outstanding on the date of purchase or such portion as such Second Lien Purchasers may otherwise agree among themselves. Such purchase price and cash collateral shall be remitted by wire transfer in federal funds to such bank account of the Priority Lien Agent as the Priority Lien Agent may designate in writing to the Second Lien Collateral Trustee for such purpose. Interest shall be calculated to but excluding the Business Day on which such sale occurs if the amounts so paid by the Second Lien Purchasers to the bank account designated by the Priority Lien Agent are received in such bank account prior to 12:00 noon, New York City time, and interest shall be calculated to and including such Business Day if the amounts so paid by the Second Lien Purchasers to the bank account designated by the Priority Lien Agent are received in such bank account later than 12:00 noon, New York City time.

(d) Such sale shall be expressly made without representation or warranty of any kind by the Priority Lien Secured Parties as to the Priority Lien Obligations, the Collateral or otherwise and without recourse to any Priority Lien Secured Party, except that the applicable Priority Lien Secured Party shall represent and warrant severally as to the Priority Lien Obligations (including unfunded commitments) and any loans provided by any of the Priority Lien Secured Parties in connection with a DIP Financing then owing to it: (i) that such applicable Priority Lien Secured Party own such Priority Lien Obligations (including unfunded commitments) and any loans provided by any of the Priority Lien Secured Parties in connection with a DIP Financing; and (ii) that such applicable Priority Lien Secured Party has the necessary corporate or other governing authority to assign such interests.

(e) After such sale becomes effective, the outstanding letters of credit will remain enforceable against the issuers thereof and will remain secured by the Priority Liens upon the Collateral in accordance with the applicable provisions of the Priority Lien Documents as in effect at the time of such sale, and the issuers of letters of credit will remain entitled to the benefit of the Priority Liens upon the Collateral and sharing rights in the proceeds thereof in accordance with the provisions of the Priority Lien Documents as in effect at the time of such sale, as fully as if the sale of the Priority Lien Debt had not been made, but only the Person or successor agent to whom the Priority Liens are transferred in such sale will have the right to foreclose upon or otherwise enforce the Priority Liens and only the Second Lien Purchasers in the sale will have the right to direct such Person or successor as to matters relating to the foreclosure or other enforcement of the Priority Liens.

ARTICLE IV
OTHER AGREEMENTS

Section 4.01 Release of Liens; Automatic Release of Second Liens and Third Liens. (a) Prior to the Discharge of Priority Lien Obligations, each of the Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party, and the Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, agrees that, in the event the Priority Lien Agent or the requisite Priority Lien Secured Parties under the Priority Lien Documents release the Priority Lien on any Collateral, each of the Second Lien and Third Lien on such Collateral shall terminate and be released automatically and without further action if (i) such release is permitted under the Second Lien Documents and the Third Lien Documents, as applicable, (ii) such release is effected in connection with

the Priority Lien Agent's foreclosure upon, or other exercise of rights or remedies with respect to, such Collateral, or (iii) such release is effected in connection with a sale or other Disposition of any Collateral (or any portion thereof) under Section 363 of the Bankruptcy Code or any other provision of the Bankruptcy Code if the Priority Lien Agent (acting at the direction of the requisite Priority Lien Secured Parties under the Priority Lien Documents) or the requisite Priority Lien Secured Parties under the Priority Lien Documents shall have consented to such sale or Disposition of such Collateral; provided that, in the case of each of clauses (i), (ii) and (iii), the Second Liens and Third Liens on such Collateral shall attach to (and shall remain subject and subordinate to all Priority Liens securing Priority Lien Obligations, subject to the Priority Lien Cap and, in the case of the Third Liens, shall remain subject and subordinate to (I) all Priority Liens securing Priority Lien Obligations, subject to the Priority Lien Cap and (II) all Second Liens securing Second Lien Obligations) any proceeds of a sale, transfer or other Disposition of Collateral not paid to the Priority Lien Secured Parties or that remain after the Discharge of Priority Lien Obligations.

(b) Following the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations, the Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, agrees that, in the event the Second Lien Collateral Trustee or the requisite Second Lien Secured Parties under the Second Lien Documents release the Second Lien on any Collateral, the Third Lien on such Collateral shall terminate and be released automatically and without further action if (i) such release is permitted under the Third Lien Documents, (ii) such release is effected in connection with the Second Lien Collateral Trustee's foreclosure upon, or other exercise of rights or remedies with respect to, such Collateral, or (iii) such release is effected in connection with a sale or other Disposition of any Collateral (or any portion thereof) under Section 363 of the Bankruptcy Code or any other provision of the Bankruptcy Code if the Second Lien Collateral Trustee or the requisite Second Lien Secured Parties under the Second Lien Documents shall have consented to such sale or Disposition of such Collateral; provided that, in the case of each of clauses (i), (ii) and (iii), the Third Liens on such Collateral shall attach to (and shall remain subject and subordinate to all Second Liens securing Second Lien Obligations) any proceeds of a sale, transfer or other Disposition of Collateral not paid to the Second Lien Secured Parties or that remain after the Discharge of Second Lien Obligations.

(c) Each of the Second Lien Collateral Trustee and the Third Lien Collateral Trustee agrees to execute and deliver (at the sole cost and expense of the Grantors) all such releases and other instruments as shall reasonably be requested by the Priority Lien Agent or the Second Lien Collateral Trustee, as applicable, to evidence and confirm any release of Collateral provided for in this Section 4.01.

Section 4.02 Certain Agreements With Respect to Insolvency or Liquidation Proceedings. (a) The parties hereto acknowledge that this Agreement is a "subordination agreement" under Section 510(a) of the Bankruptcy Code and shall continue in full force and effect, notwithstanding the commencement of any Insolvency or Liquidation Proceeding by or against SM Energy or any subsidiary of SM Energy. All references in this Agreement to SM Energy or any subsidiary of SM Energy or any other Grantor will include such Person or Persons as a debtor-in-possession and any receiver or trustee for such Person or Persons in an Insolvency or Liquidation Proceeding. For the purposes of this Section 4.02, unless otherwise provided herein, clauses (b) through and including (o) shall be in full force and effect prior to the Discharge of Priority Lien Obligations and clauses (p) through and including (cc) shall be in full force and effect following the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations.

(b) If SM Energy or any of its subsidiaries shall become subject to any Insolvency or Liquidation Proceeding and shall, as debtor(s)-in-possession, or if any receiver or trustee for such Person or Persons shall, move for approval of financing ("DIP Financing") to be provided by one or more lenders (the "DIP Lenders") under Section 364 of the Bankruptcy Code or the use of cash collateral under Section 363 of the Bankruptcy Code, (i) the Second Lien Collateral Trustee, for itself and on behalf of each Second Lien Secured Party, agrees that neither it nor any other Second Lien Secured Party and (ii) the Third Lien Collateral Trustee, for itself and on behalf of each Third Lien Secured Party, agrees that neither it nor any other Third Lien Secured Party, will raise any objection, contest or oppose, and each Second Lien Secured Party and Third Lien Secured Party will waive any claim such Person may now or hereafter have, to any such financing or to the Liens on the Collateral securing the same ("DIP Financing Liens"), or to any use, sale or lease of cash collateral that constitutes Collateral or to any grant of administrative expense priority under Section 364 of the Bankruptcy Code, unless (A) the Priority Lien Agent or the Priority Lien Secured Parties oppose or object to such DIP Financing or such DIP Financing Liens or such use of cash collateral, (B) the maximum principal amount of indebtedness permitted under such DIP Financing exceeds the sum of (I) the amount of Priority Lien Obligations refinanced with the proceeds thereof (not including the amount of any Excess Priority Lien Obligations) and (II) the greater of (x) $150.0 million and (y) 15% of the sum of (i) the Borrowing Base as in effect at such time and (ii) the amount of any Borrowing Base Deficiency existing at such time, or (C) the terms of such DIP Financing provide for the sale of a substantial part of the Collateral or require the confirmation of a plan of reorganization or liquidation, as applicable, containing specific terms or provisions (other than repayment in cash of such DIP Financing on the effective date thereof). To the extent such DIP Financing Liens are senior to, or rank *pari passu* with, the Priority Liens, (1) the Second Lien Collateral Trustee will, for itself and on behalf of the other Second Lien Secured Parties, subordinate the Second Liens on the Collateral to the Priority Liens, to such DIP Financing Liens and to any customary carve-out in respect of professional fees and expenses and expenses of the U.S. trustee, in each case, in connection with such Insolvency or Liquidation Proceeding, so long as the Second Lien Collateral Trustee, on behalf of the Second Lien Secured Parties, retains Liens on all the Collateral, including proceeds thereof arising after the commencement of any Insolvency or Liquidation Proceeding, with the same priority relative to the Priority Liens and the Third Liens as existed prior to the commencement of the case under the Bankruptcy Code and (2) the Third Lien Collateral Trustee will, for itself and on behalf of the other Third Lien Secured Parties, subordinate the Third Liens on the Collateral to the Priority Liens, the Second Liens, to such DIP Financing Liens and to any customary carve-out in respect of professional fees and expenses and expenses of the U.S. trustee, in each case, in connection with such Insolvency or Liquidation Proceeding, so long as the Third Lien Collateral Trustee, on behalf of the Third Lien Secured Parties, retains Liens on all the Collateral, including proceeds thereof arising after the commencement of any Insolvency or Liquidation Proceeding, with the same priority relative to the Priority Liens and the Second Liens as existed prior to the commencement of the case under the Bankruptcy Code.

(c) Prior to the Discharge of Priority Lien Obligations, without the consent of the Priority Lien Agent, in its sole discretion, each of the Second Lien Collateral Trustee, for itself and on behalf of each Second Lien Secured Party and the Third Lien Collateral Trustee, for itself and on behalf of each Third Lien Secured Party, agrees not to propose, support or enter into any DIP Financing.

(d) Each of the Second Lien Collateral Trustee, for itself and on behalf of each Second Lien Secured Party and the Third Lien Collateral Trustee, for itself and on behalf of each Third Lien Secured Party, agrees that it will not object to, oppose or contest (or join with or support any third party objecting to, opposing or contesting) a sale or other Disposition, a motion to sell or Dispose or the bidding procedure for such sale or Disposition of any Collateral (or any portion thereof) under Section 363 of the Bankruptcy Code or any other provision of the Bankruptcy Code if the Priority Lien Agent

(acting at the direction of the requisite Priority Lien Secured Parties under the Priority Lien Documents) or the requisite Priority Lien Secured Parties under the Priority Lien Documents shall have consented to such sale or Disposition, such motion to sell or Dispose or such bidding procedure for such sale or Disposition of such Collateral and all Priority Liens, Second Liens and Third Liens will attach to the proceeds of the sale in the same respective priorities as set forth in this Agreement.

(e) Each of the Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party and the Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, waives any claim that may be had against the Priority Lien Agent or any other Priority Lien Secured Party arising out of any DIP Financing Liens (that is granted in a manner that is consistent with this Agreement), request for adequate protection or administrative expense priority under Section 364 of the Bankruptcy Code.

(f) The Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party, agrees that neither the Second Lien Collateral Trustee nor any other Second Lien Secured Party and the Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, agrees that neither the Third Lien Collateral Trustee nor any other Third Lien Secured Party, will file or prosecute in any Insolvency or Liquidation Proceeding any motion for adequate protection (or any comparable request for relief) based upon their interest in the Collateral, nor object to, oppose or contest (or join with or support any third party objecting to, opposing or contesting) any request by the Priority Lien Agent or any other Priority Lien Secured Party for adequate protection or any objection by the Priority Lien Agent or any other Priority Lien Secured Party to any motion, relief, action or proceeding based on the Priority Lien Agent or Priority Lien Secured Parties claiming a lack of adequate protection, except that

(A) the Second Lien Collateral Trustee and the other Second Lien Secured Parties may:

(I) freely seek and obtain relief granting adequate protection in the form of a replacement lien co-extensive in all respects with, but subordinated (as set forth in Section 2.01) to, and with the same relative priority to the Priority Liens and the Third Liens as existed prior to the commencement of the Insolvency or Liquidation Proceeding, all Liens granted in the Insolvency or Liquidation Proceeding to, or for the benefit of, the Priority Lien Secured Parties; and

(II) freely seek and obtain any relief upon a motion for adequate protection (or any comparable relief), without any condition or restriction whatsoever, at any time after the Discharge of Priority Lien Obligations; and

(B) the Third Lien Secured Parties may:

(I) freely seek and obtain relief granting adequate protection in the form of a replacement lien co-extensive in all respects with, but subordinated (as set forth in Section 2.01) to, and with the same relative priority to the Priority Liens and the Second Liens as existed prior to the commencement of the Insolvency or Liquidation Proceeding, all Liens granted in the Insolvency or Liquidation Proceeding to, or for the benefit of, the Priority Lien Secured Parties and the Second Lien Secured Parties; and

(II) freely seek and obtain any relief upon a motion for adequate protection (or any comparable relief), without any condition or restriction whatsoever, at

any time after the Discharge of Priority Lien Obligations and the Discharge of Second Lien Obligations.

(g) Each of the Second Lien Collateral Trustee, for itself and on behalf of each of the other of the Second Lien Secured Parties and the Third Lien Collateral Trustee, for itself and on behalf of each of the other Third Lien Secured Parties, waives any claim it or any such other Second Lien Secured Party or Third Lien Secured Party, as applicable, may now or hereafter have against the Priority Lien Agent or any other Priority Lien Secured Party (or their representatives) arising out of any election by the Priority Lien Agent or any Priority Lien Secured Parties, in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b) of the Bankruptcy Code.

(h) The Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party, agrees that in any Insolvency or Liquidation Proceeding, neither the Second Lien Collateral Trustee nor any other Second Lien Secured Party and the Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, agrees that in any Insolvency or Liquidation Proceeding, neither the Third Lien Collateral Trustee nor any other Third Lien Secured Party, shall support or vote to accept any plan of reorganization or liquidation, as applicable, or disclosure statement of SM Energy or any other Grantor or any of their subsidiaries unless (i) such plan is accepted by the Class of Priority Lien Secured Parties in accordance with Section 1126(c) of the Bankruptcy Code or otherwise provides for the payment in full in cash of all Priority Lien Obligations (including all post-petition interest approved by the bankruptcy court, fees and expenses and cash collateralization of all letters of credit) on the effective date of such plan of reorganization or liquidation, as applicable, or (ii) such accepted plan provides on account of the Priority Lien Secured Parties for the retention by the Priority Lien Agent, for the benefit of the Priority Lien Secured Parties, of the Liens on the Collateral securing the Priority Lien Obligations, and on all proceeds thereof whenever received, and such plan also provides that any Liens retained by, or granted to, the Second Lien Collateral Trustee and the Third Lien Collateral Trustee are only on property securing the Priority Lien Obligations and shall have the same relative priority with respect to the Collateral or other property, respectively, as provided in this Agreement with respect to the Collateral. Except as provided herein, each of the Second Lien Secured Parties and the Third Lien Secured Parties shall remain entitled to vote their claims in any such Insolvency or Liquidation Proceeding.

(i) The Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party, agrees that neither the Second Lien Collateral Trustee nor any other Second Lien Secured Party and the Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, agrees that neither the Third Lien Collateral Trustee nor any other Third Lien Secured Party, shall seek relief, pursuant to Section 362(d) of the Bankruptcy Code or otherwise, from the automatic stay of Section 362(a) of the Bankruptcy Code or from any other stay in any Insolvency or Liquidation Proceeding in respect of the Collateral without the prior written consent of the Priority Lien Agent.

(j) The Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party, agrees that neither the Second Lien Collateral Trustee nor any other Second Lien Secured Party and the Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, agrees that neither the Third Lien Collateral Trustee nor any other Third Lien Secured Party, shall oppose or seek to challenge any claim by the Priority Lien Agent or any other Priority Lien Secured Party for allowance or payment in any Insolvency or Liquidation Proceeding of Priority Lien Obligations consisting of post-petition interest, fees or expenses or cash collateralization of all letters of credit to the extent of the value of the Priority Liens (it being understood that such value will be

determined without regard to the existence of the Second Liens or the Third Liens on the Collateral) subject to the Priority Lien Cap. Neither the Priority Lien Agent nor any other Priority Lien Secured Party shall oppose or seek to challenge any claim by the Second Lien Collateral Trustee, any other Second Lien Secured Party, the Third Lien Collateral Trustee or any other Third Lien Secured Party for allowance or payment in any Insolvency or Liquidation Proceeding of Second Lien Obligations or Third Lien Obligations, as applicable, consisting of post-petition interest, fees or expenses to the extent of the value of the Second Liens or the Third Liens, as applicable, on the Collateral; provided that if the Priority Lien Agent or any other Priority Lien Secured Party shall have made any such claim, such claim (i) shall have been approved or (ii) will be approved contemporaneously with the approval of any such claim by the Second Lien Collateral Trustee or any Second Lien Secured Party or the Third Lien Collateral Trustee or any Third Lien Secured Party, as applicable.

(k) Without the express written consent of the Priority Lien Agent, none of the Second Lien Collateral Trustee, any other Second Lien Secured Party, the Third Lien Collateral Trustee or any other Third Lien Secured Party shall (or shall join with or support any third party in opposing, objecting to or contesting, as the case may be), in any Insolvency or Liquidation Proceeding involving any Grantor, (i) oppose, object to or contest the determination of the extent of any Liens held by any Priority Lien Secured Party or the value of any claims of any such holder under Section 506(a) of the Bankruptcy Code or (ii) oppose, object to or contest the payment to any Priority Lien Secured Party of interest, fees or expenses under Section 506(b) of the Bankruptcy Code subject to the Priority Lien Cap.

(l) Notwithstanding anything to the contrary contained herein, if in any Insolvency or Liquidation Proceeding a determination is made that any Lien encumbering any Collateral is not enforceable for any reason, then each of the Second Lien Collateral Trustee for itself and on behalf of each other Second Lien Secured Party and the Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, agrees that, any distribution or recovery they may receive in respect of any Collateral shall be segregated and held in trust and forthwith paid over to the Priority Lien Agent for the benefit of the Priority Lien Secured Parties in the same form as received without recourse, representation or warranty (other than a representation of the Second Lien Collateral Trustee or the Third Lien Collateral Trustee, as applicable, that it has not otherwise sold, assigned, transferred or pledged any right, title or interest in and to such distribution or recovery) but with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. Each of the Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party and the Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, hereby appoints the Priority Lien Agent, and any officer or agent of the Priority Lien Agent, with full power of substitution, the attorney-in-fact of each Second Lien Secured Party and Third Lien Secured Party for the limited purpose of carrying out the provisions of this Section 4.02(l) and taking any action and executing any instrument that the Priority Lien Agent may deem necessary or advisable to accomplish the purposes of this Section 4.02(l), which appointment is irrevocable and coupled with an interest.

(m) Each of the Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party and the Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, hereby agrees that the Priority Lien Agent shall have the exclusive right to credit bid the Priority Lien Obligations and further that none of the Second Lien Collateral Trustee, any other Second Lien Secured Party, the Third Lien Collateral Trustee or any other Third Lien Secured Party shall (or shall join with or support any third party in opposing, objecting to or contesting, as the case may be) oppose, object to or contest such credit bid by the Priority Lien Agent.

(n) Prior to the Discharge of Priority Lien Obligations, without the consent of the Priority Lien Agent in its sole discretion, each of the Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party and the Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, agrees it will not file or join an involuntary bankruptcy petition or claim or seek the appointment of an examiner or a trustee for SM Energy, any other Grantor or any of their subsidiaries.

(o) Each of the Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party and the Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, waives any right to assert or enforce any claim under Section 506(c) or 552 of the Bankruptcy Code as against any Priority Lien Secured Party or any of the Collateral, except as expressly permitted by this Agreement.

(p) Subject to Section 4.02(c), if SM Energy, any other Grantor or any of their subsidiaries shall become subject to any Insolvency or Liquidation Proceeding and shall, as debtor(s)-in-possession, move for approval of DIP Financing to be provided by one or more DIP Lenders under Section 364 of the Bankruptcy Code or the use of cash collateral under Section 363 of the Bankruptcy Code, the Third Lien Collateral Trustee, for itself and on behalf of each Third Lien Secured Party, agrees that neither it nor any other Third Lien Secured Party will raise any objection, contest or oppose, and each Third Lien Secured Party will waive any claim such Person may now or hereafter have, to any such financing or to the DIP Financing Liens on the Collateral securing the same, or to any use, sale or lease of cash collateral that constitutes Collateral or to any grant of administrative expense priority under Section 364 of the Bankruptcy Code, unless (i) the Second Lien Collateral Trustee or the Second Lien Secured Parties oppose or object to such DIP Financing or such DIP Financing Liens or such use of cash collateral or (ii) the maximum principal amount of indebtedness permitted under such DIP Financing exceeds the sum of (A) the amount of Second Lien Obligations refinanced with the proceeds thereof and (B) $165.0 million. To the extent such DIP Financing Liens are senior to, or rank *pari passu* with, the Second Liens, the Third Lien Collateral Trustee will, for itself and on behalf of the other Third Lien Secured Parties, subordinate the Third Liens on the Collateral to the Second Liens, to such DIP Financing Liens and to any customary carve-out in respect of professional fees and expenses and expenses of the U.S. trustee, in each case, in connection with such Insolvency or Liquidation Proceeding, so long as the Third Lien Collateral Trustee, on behalf of the Third Lien Secured Parties, retains Liens on all the Collateral, including proceeds thereof arising after the commencement of any Insolvency or Liquidation Proceeding, with the same priority relative to the Priority Liens and the Second Liens as existed prior to the commencement of the case under the Bankruptcy Code.

(q) Without the consent of the Second Lien Collateral Trustee in its sole discretion, the Third Lien Collateral Trustee, for itself and on behalf of each Third Lien Secured Party, agrees not to propose, support or enter into any DIP Financing.

(r) The Third Lien Collateral Trustee, for itself and on behalf of each Third Lien Secured Party, agrees that it will not object to, oppose or contest (or join with or support any third party objecting to, opposing or contesting) a sale or other Disposition, a motion to sell or Dispose or the bidding procedure for such sale or Disposition of any Collateral (or any portion thereof) under Section 363 of the Bankruptcy Code or any other provision of the Bankruptcy Code if the Second Lien Collateral Trustee (acting at the direction of the requisite Second Lien Secured Parties under the Second Lien Documents) or the requisite Second Lien Secured Parties under the Second Lien Documents shall have consented to such sale or Disposition, such motion to sell or Dispose or such bidding procedure for such

sale or Disposition of such Collateral and all Second Liens and all Third Liens will attach to the proceeds of the sale in the same respective priorities as set forth in this Agreement.

(s) The Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, waives any claim that may be had against the Second Lien Collateral Trustee or any other Second Lien Secured Party arising out of any DIP Financing Liens (granted in a manner that is consistent with this Agreement) or administrative expense priority under Section 364 of the Bankruptcy Code.

(t) The Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, agrees that neither the Third Lien Collateral Trustee nor any other Third Lien Secured Party will file or prosecute in any Insolvency or Liquidation Proceeding any motion for adequate protection (or any comparable request for relief) based upon their interest in the Collateral, nor object to, oppose or contest (or join with or support any third party objecting to, opposing or contesting) any request by the Second Lien Collateral Trustee or any other Second Lien Secured Party for adequate protection or any objection by the Second Lien Collateral Trustee or any other Second Lien Secured Party to any motion, relief, action or proceeding based on the Second Lien Collateral Trustee or Second Lien Secured Parties claiming a lack of adequate protection, except that the Third Lien Collateral Trustee and the Third Lien Secured Parties may:

(A) freely seek and obtain relief granting adequate protection in the form of a replacement lien co-extensive in all respects with, but subordinated (as set forth in Section 2.01) to, with the same relative priority to the Second Liens as existed prior to the commencement of the Insolvency or Liquidation Proceeding, all Liens granted in the Insolvency or Liquidation Proceeding to, or for the benefit of, the Second Lien Secured Parties; and

(B) freely seek and obtain any relief upon a motion for adequate protection (or any comparable relief), without any condition or restriction whatsoever, at any time after the Discharge of Second Lien Obligations.

(u) The Third Lien Collateral Trustee, for itself and on behalf of each of the other of the Third Lien Secured Parties, waives any claim the Third Lien Collateral Trustee or any such other Third Lien Secured Party may now or hereafter have against the Second Lien Collateral Trustee or any other Second Lien Secured Party (or their representatives) arising out of any election by the Second Lien Collateral Trustee or any other Second Lien Secured Parties, in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b) of the Bankruptcy Code.

(v) The Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, agrees that in any Insolvency or Liquidation Proceeding, neither the Third Lien Collateral Trustee nor any other Third Lien Secured Party shall support or vote for any plan of reorganization or liquidation, as applicable, or disclosure statement of SM Energy, any other Grantor or any of their subsidiaries unless (i) such plan is accepted by the Class of Second Lien Secured Parties in accordance with Section 1126(c) of the Bankruptcy Code or otherwise provides for the payment in full in cash of all Second Lien Obligations (including all post-petition interest, fees and expenses) on the effective date of such plan of reorganization or liquidation, as applicable, or (ii) such accepted plan provides on account of the Second Lien Secured Parties for the retention by the Second Lien Collateral Trustee, for the benefit of the Second Lien Secured Parties, of the Liens on the Collateral securing the Second Lien Obligations, and on all proceeds thereof whenever received, and such plan also provides that any Liens retained by, or granted to, the Third Lien Collateral Trustee are only on property securing the

Second Lien Obligations and shall have the same relative priority with respect to the Collateral or other property, respectively, as provided in this Agreement with respect to the Collateral. Except as provided herein, the Third Lien Secured Parties shall remain entitled to vote their claims in any such Insolvency or Liquidation Proceeding.

(w) The Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, hereby agrees that until the Discharge of Second Lien Obligations has occurred, neither Third Lien Collateral Trustee nor any Third Lien Secured Party shall seek relief, pursuant to Section 362(d) of the Bankruptcy Code or otherwise, from the automatic stay of Section 362(a) of the Bankruptcy Code or from any other stay or prohibition in any Insolvency or Liquidation Proceeding in respect of the Collateral, without the prior written consent of the Second Lien Collateral Trustee.

(x) The Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, agrees that neither Third Lien Collateral Trustee nor any other Third Lien Secured Party shall oppose or seek to challenge any claim by the Second Lien Collateral Trustee or any other Second Lien Secured Party for allowance or payment in any Insolvency or Liquidation Proceeding of Second Lien Obligations consisting of post-petition interest, fees or expenses to the extent of the value of the Second Liens (it being understood that such value will be determined without regard to the existence of the Third Liens on the Collateral). Neither Second Lien Collateral Trustee nor any other Second Lien Secured Party shall oppose or seek to challenge any claim by the Third Lien Collateral Trustee or any other Third Lien Secured Party for allowance or payment in any Insolvency or Liquidation Proceeding of Third Lien Obligations consisting of post-petition interest, fees or expenses to the extent of the value of the Third Liens on the Collateral; provided that if the Second Lien Collateral Trustee or any other Second Lien Secured Party shall have made any such claim, such claim (i) shall have been approved or (ii) will be approved contemporaneously with the approval of any such claim by the Third Lien Collateral Trustee or any other Third Lien Secured Party.

(y) Without the express written consent of the Second Lien Collateral Trustee, neither Third Lien Collateral Trustee nor any other Third Lien Secured Party shall (or shall join with or support any third party in opposing, objecting to or contesting, as the case may be), in any Insolvency or Liquidation Proceeding involving any Grantor, (i) oppose, object to or contest the determination of the extent of any Liens held by any Second Lien Secured Party or the value of any claims of any such holder under Section 506(a) of the Bankruptcy Code or (ii) oppose, object to or contest the payment to any Second Lien Secured Party of interest, fees or expenses under Section 506(b) of the Bankruptcy Code.

(z) Notwithstanding anything to the contrary contained herein, if in any Insolvency or Liquidation Proceeding a determination is made that any Lien encumbering any Collateral is not enforceable for any reason, then the Third Lien Collateral Trustee for itself and on behalf of each other Third Lien Secured Party, agrees that, any distribution or recovery they may receive in respect of any Collateral shall be segregated and held in trust and forthwith paid over to the Second Lien Collateral Trustee for the benefit of the Second Lien Secured Parties in the same form as received without recourse, representation or warranty (other than a representation of the Third Lien Collateral Trustee that it has not otherwise sold, assigned, transferred or pledged any right, title or interest in and to such distribution or recovery) but with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, hereby appoints the Second Lien Collateral Trustee, and any officer or agent of the Second Lien Collateral Trustee, with full power of substitution, the attorney-in-fact of each Third Lien Secured Party

for the limited purpose of carrying out the provisions of this Section 4.02(z) and taking any action and executing any instrument that the Second Lien Collateral Trustee may deem necessary or advisable to accomplish the purposes of this Section 4.02(z), which appointment is irrevocable and coupled with an interest.

(aa) The Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, hereby agrees that the Second Lien Collateral Trustee shall have the exclusive right to credit bid the Second Lien Obligations and further that neither the Third Lien Collateral Trustee nor any other Third Lien Secured Party shall (or shall join with or support any third party in opposing, objecting to or contesting, as the case may be) oppose, object to or contest such credit bid by the Second Lien Collateral Trustee.

(bb) After the Discharge of Priority Lien Obligations and until the Discharge of Second Lien Obligations, without the consent of the Second Lien Collateral Trustee in its sole discretion, the Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, agrees it will not file or join an involuntary bankruptcy petition or claim or seek the appointment of an examiner or a trustee for SM Energy, any other Grantor or any of their respective subsidiaries.

(cc) The Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, waives any right to assert or enforce any claim under Section 506(c) or 552 of the Bankruptcy Code as against any Second Lien Secured Party or any of the Collateral, except as expressly permitted by this Agreement.

Section 4.03 Reinstatement. If any Priority Lien Secured Party is required in any Insolvency or Liquidation Proceeding or otherwise to turn over or otherwise pay to the estate of any Grantor any amount (a "Recovery") for any reason whatsoever, then the Priority Lien Obligations shall be reinstated to the extent of such Recovery and the Priority Lien Secured Parties shall be entitled to a reinstatement of Priority Lien Obligations with respect to all such recovered amounts. Each of the Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party, and the Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, agrees that if, at any time, a Second Lien Secured Party or a Third Lien Secured Party, as applicable, receives notice of any Recovery, the Second Lien Collateral Trustee, any other Second Lien Secured Party, the Third Lien Collateral Trustee or any other Third Lien Secured Party, as applicable, shall promptly pay over to the Priority Lien Agent any payment received by it and then in its possession or under its control in respect of any Collateral subject to any Priority Lien securing such Priority Lien Obligations and shall promptly turn any Collateral subject to any such Priority Lien then held by it over to the Priority Lien Agent, and the provisions set forth in this Agreement shall be reinstated as if such payment had not been made. If this Agreement shall have been terminated prior to any such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto from such date of reinstatement. Any amounts received by the Second Lien Collateral Trustee, any other Second Lien Secured Party, the Third Lien Collateral Trustee or any other Third Lien Secured Party and then in its possession or under its control on account of the Second Lien Obligations or Third Lien Obligations, as applicable, after the termination of this Agreement shall, in the event of a reinstatement of this Agreement pursuant to this Section 4.03, be held in trust for and paid over to the Priority Lien Agent for the benefit of the Priority Lien Secured Parties for application to the reinstated Priority Lien Obligations until the discharge thereof. This Section 4.03 shall survive termination of this Agreement.

Section 4.04 Refinancings; Additional Second Lien Debt; Initial Third Lien Indebtedness; Additional Third Lien Debt.

(a) The Priority Lien Obligations, the Second Lien Obligations and the Third Lien Obligations may be Replaced, by any Priority Substitute Credit Facility, Second Lien Substitute Facility or Third Lien Substitute Facility, as the case may be, in each case, without notice to, or the consent of any Secured Party, all without affecting the Lien priorities provided for herein or the other provisions hereof; provided, that (i) the Priority Lien Agent, the Second Lien Collateral Trustee and the Third Lien Collateral Trustee shall receive on or prior to incurrence of a Priority Substitute Credit Facility, Second Lien Substitute Facility or Third Lien Substitute Credit Facility (A) an Officer's Certificate from SM Energy stating that (I) the incurrence thereof is permitted by each applicable Secured Debt Document to be incurred and (II) the requirements of Section 4.06 have been satisfied, and (B) a Priority Confirmation Joinder from the holders or lenders of any indebtedness that Replaces the Priority Lien Obligations, the Second Lien Obligations or the Third Lien Obligations (or an authorized agent, trustee or other representative on their behalf), (ii) the aggregate outstanding principal amount of the Priority Lien Obligations, after giving effect to such Priority Substitute Credit Facility, shall not exceed the Priority Lien Cap and (iii) on or before the date of such incurrence, such Priority Substitute Credit Facility, Second Lien Substitute Facility or Third Lien Substitute Facility is designated by SM Energy, in an Officer's Certificate delivered to the Priority Lien Agent, the Second Lien Collateral Trustee and the Third Lien Collateral Trustee, as "Priority Lien Debt", "Second Lien Debt" or "Third Lien Debt", as applicable, for the purposes of the Secured Debt Documents and this Agreement; provided that no Series of Secured Debt may be designated as more than one of Priority Lien Debt, Second Lien Debt or Third Lien Debt.

(b) SM Energy will be permitted to designate as an additional holder of Second Lien Obligations or Third Lien Obligations hereunder each Person who is, or who becomes, the registered holder of Second Lien Debt or Third Lien Debt, as applicable, incurred by SM Energy after the date of this Agreement in accordance with the terms of all applicable Secured Debt Documents. SM Energy may effect such designation by delivering to the Priority Lien Agent, the Second Lien Collateral Trustee and the Third Lien Collateral Trustee, each of the following:

(i) an Officer's Certificate stating that SM Energy intends to incur (A) Additional Second Lien Obligations which will be Second Lien Debt, (B) Initial Third Lien Obligations which will be Third Lien Debt or (C) Additional Third Lien Obligations which will be Third Lien Debt, which in each case, will be permitted by each applicable Secured Debt Document to be incurred and secured by a Second Lien or Third Lien, as applicable, equally and ratably with all previously existing and future Second Lien Debt or Third Lien Debt, as applicable;

(ii) an authorized agent, trustee or other representative on behalf of the holders or lenders of any Additional Second Lien Obligations, Initial Third Lien Obligations or Additional Third Lien Obligations, as applicable, must be designated as an additional holder of Secured Obligations hereunder and must, prior to such designation, sign and deliver on behalf of the holders or lenders of such Additional Second Lien Obligations, Initial Third Lien Obligations or Additional Third Lien Obligations, as applicable, a Priority Confirmation Joinder, and, to the extent necessary or appropriate to facilitate such transaction, a new intercreditor agreement substantially similar to this Agreement, as in effect on the date hereof; and

(iii) evidence that SM Energy has duly authorized, executed (if applicable) and recorded (or caused to be recorded) in each appropriate governmental office all relevant

filings and recordations deemed necessary by SM Energy and the holder of such Additional Second Lien Obligations, Initial Third Lien Obligations or Additional Third Lien Obligations, as applicable, or its Secured Debt Representative, to ensure that the Additional Second Lien Obligations, Initial Third Lien Obligations or Additional Third Lien Obligations are secured by the Collateral in accordance with the Second Lien Security Documents or the Third Lien Security Documents, as applicable (provided that such filings and recordings may be authorized, executed and recorded following any incurrence on a post-closing basis if permitted by the Second Lien Representative or Third Lien Representative for such Additional Second Lien Obligations or Additional Third Lien Obligations, as applicable).

For the avoidance of doubt, the deliveries set forth in clauses (i) through (iii) of Section 4.04(b) shall not be required (and shall be deemed satisfied) in connection with an issuance of Additional Notes constituting Second Lien Indenture Notes.

(c) SM Energy will be permitted to enter into an Initial Third Lien Debt Facility to the extent such Initial Third Lien Debt Facility is permitted by the Priority Credit Agreement, the other Priority Lien Documents, the Second Lien Indenture and the other Second Lien Documents. Any Third Lien Debt incurred pursuant to such Initial Third Lien Debt Facility may be secured by a Third Lien under and pursuant to the Initial Third Lien Security Documents provided the Third Lien Collateral Trustee, acting for itself and on behalf of the Initial Third Lien Secured Parties, becomes a party to this Agreement by satisfying the conditions set forth in clauses (i) and (ii) of the immediately succeeding paragraph.

In order for the Third Lien Collateral Trustee to become a party to this Agreement,

(i) the Priority Lien Agent, the Second Lien Collateral Trustee and the Third Lien Collateral Trustee shall have executed and delivered a Priority Confirmation Joinder pursuant to which (a) such Third Lien Collateral Trustee becomes a Secured Debt Representative hereunder and (b) the Third Lien Debt and the related Initial Third Lien Secured Parties become subject hereto and bound hereby;

(ii) SM Energy shall have delivered to the Priority Lien Agent and the Second Lien Collateral Trustee (A) true and complete copies of each Initial Third Lien Document and (B) an Officer's Certificate certifying such copies as being true and correct and identifying the obligations to be designated as Initial Third Lien Obligations and the initial aggregate principal amount thereof; and

(iii) without limiting Section 4.06, the Initial Third Lien Documents relating to such Third Lien Debt shall provide, in a manner satisfactory to the Priority Lien Agent and the Second Lien Collateral Trustee, that each Initial Third Lien Secured Party shall be subject to and bound by the provisions of this Agreement in its capacity as a holder of such Third Lien Debt.

Notwithstanding the foregoing, nothing in this Agreement will be construed to allow SM Energy or any other Grantor to incur additional indebtedness unless otherwise permitted by the terms of each applicable Secured Debt Document.

Each of the then-existing Priority Lien Agent, the Second Lien Collateral Trustee and the Third Lien Collateral Trustee shall be authorized to execute and deliver such documents and agreements (including amendments or supplements to this Agreement) as such holders, lenders, agent, trustee or other representative may reasonably request to give effect to any such Replacement or any incurrence of Additional Notes, Additional Second Lien Obligations, Initial Third Lien Obligations or Additional Third Lien Obligations, it being understood that the Priority Lien Agent, the Second Lien Collateral Trustee and

the Third Lien Collateral Trustee or (if permitted by the terms of the applicable Secured Debt Documents) the Grantors, without the consent of any other Secured Party or (in the case of the Grantors) one or more Secured Debt Representatives, may amend, supplement, modify or restate this Agreement to the extent necessary or appropriate to facilitate such amendments or supplements to effect such Replacement or incurrence all at the expense of the Grantors. Upon the consummation of such Replacement or incurrence and the execution and delivery of the documents and agreements contemplated in the preceding sentence, the holders or lenders of such indebtedness and any authorized agent, trustee or other representative thereof shall be entitled to the benefits of this Agreement.

Section 4.05 Amendments to Second Lien Documents and Third Lien Documents.

(a) Prior to the Discharge of Priority Lien Obligations, without the prior written consent of the Priority Lien Agent, no Second Lien Document or Third Lien Document may be amended, supplemented, restated or otherwise modified and/or refinanced or entered into to the extent such amendment, supplement, restatement or modification and/or refinancing, or the terms of any new Second Lien Document or Third Lien Document, as applicable, would (i) adversely affect the lien priority rights of the Priority Lien Secured Parties or the rights of the Priority Lien Secured Parties to receive payments owing pursuant to the Priority Lien Documents, (ii) except as otherwise provided for in this Agreement, add any Liens on any additional Property granted under the Second Lien Security Documents or the Third Lien Security Documents, unless such additional Property is added as Priority Lien Collateral under the Priority Lien Documents, (iii) confer any additional rights on the Second Lien Collateral Trustee, any other Second Lien Secured Party, the Third Lien Collateral Trustee or any other Third Lien Secured Party in a manner adverse to the Priority Lien Secured Parties, or (iv) contravene the provisions of this Agreement or the Priority Lien Documents.

(b) Prior to the Discharge of Second Lien Obligations, without the prior written consent of the Second Lien Collateral Trustee, no Third Lien Document may be amended, supplemented, restated or otherwise modified and/or refinanced or entered into to the extent such amendment, supplement, restatement or modification and/or refinancing, or the terms of any new Third Lien Document, as applicable, would (i) adversely affect the lien priority rights of the Second Lien Secured Parties or the rights of the Second Lien Secured Parties to receive payments owing pursuant to the Second Lien Documents, (ii) except as otherwise provided for in this Agreement, add any Liens on any additional Property granted under the Third Lien Security Documents, unless such additional Property is added as Second Lien Collateral under the Second Lien Documents, (iii) confer any additional rights on the Third Lien Collateral Trustee or any other Third Lien Secured Party in a manner adverse to the Second Lien Secured Parties, or (iv) contravene the provisions of this Agreement or the Second Lien Documents.

Section 4.06 Legends. Each of

(a) the Priority Lien Agent acknowledges with respect to the Priority Credit Agreement and the Priority Lien Security Documents,

(b) the Second Lien Collateral Trustee acknowledges with respect to (i) the Second Lien Indenture and the Indenture Second Lien Security Documents, and (ii) the Additional Second Lien Debt Facility and the Additional Second Lien Security Documents, if any, and

(c) the Third Lien Collateral Trustee acknowledges with respect to (i) the Initial Third Lien Debt Facility and the Initial Third Lien Security Documents, if any, and (ii) the Additional Third Lien Debt Facility and the Additional Third Lien Security Documents, if any, that

the Second Lien Indenture, the Initial Third Lien Debt Facility (if any), the Additional Second Lien Debt Facility (if any), the Additional Third Lien Debt Facility (if any), the Second Lien Documents (other than control agreements to which both the Priority Lien Agent and the Second Lien Collateral Trustee are parties), the Third Lien Documents (other than control agreements to which the Priority Lien Agent or the Second Lien Collateral Trustee, as applicable, and the Third Lien Collateral Trustee are parties) and each associated Security Document (other than control agreements to which both the Priority Lien Agent and the Second Lien Collateral Trustee are parties or, in the case of Third Lien Security Documents, other than control agreements to which the Priority Lien Agent or the Second Lien Collateral Trustee, as applicable, and the Third Lien Collateral Trustee are parties) granting any security interest in the Collateral will contain the appropriate legend set forth on Annex I.

Section 4.07 Second Lien Secured Parties and Third Lien Secured Parties Rights as Unsecured Creditors; Judgment Lien Creditor. Both before and during an Insolvency or Liquidation Proceeding, any of the Second Lien Secured Parties and the Third Lien Secured Parties may take any actions and exercise any and all rights that would be available to a holder of unsecured claims; provided, however, that the Second Lien Secured Parties and the Third Lien Secured Parties may not take any of the actions prohibited by Section 3.05(a) or Section 4.02 or any other provisions in this Agreement; provided, further, that in the event that any of the Second Lien Collateral Trustee, any Second Lien Secured Parties, the Third Lien Collateral Trustee or any Third Lien Secured Parties becomes a judgment lien creditor in respect of any Collateral as a result of its enforcement of its rights as an unsecured creditor with respect to the Second Lien Obligations or the Third Lien Obligations, as applicable, such judgment lien shall be subject to the terms of this Agreement for all purposes (including in relation to the Priority Lien Obligations and the Second Lien Obligations, as applicable) as the Second Liens and Third Liens, as applicable, are subject to this Agreement.

Section 4.08 Postponement of Subrogation. (a) Each of the Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party, and the Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, hereby agrees that no payment or distribution to any Priority Lien Secured Party pursuant to the provisions of this Agreement shall entitle the Second Lien Collateral Trustee, any Second Lien Secured Party, the Third Lien Collateral Trustee or any Third Lien Secured Party to exercise any rights of subrogation in respect thereof until, in the case of the Second Lien Collateral Trustee or the other Second Lien Secured Parties, the Discharge of Priority Lien Obligations, and in the case of the Third Lien Collateral Trustee or the other Third Lien Secured Parties, the Discharge of Priority Lien Obligations and Discharge of Second Lien Obligations shall each have occurred. Following the Discharge of Priority Lien Obligations, but subject to the reinstatement as provided in Section 4.03, each Priority Lien Secured Party will execute such documents, agreements, and instruments as any Second Lien Secured Party may reasonably request to evidence the transfer by subrogation to any such Person of an interest in the Priority Lien Obligations resulting from payments or distributions to such Priority Lien Secured Party by such Person, so long as all costs and expenses (including all reasonable legal fees and disbursements) incurred in connection therewith by such Priority Lien Secured Party are paid by such Person upon request for payment thereof.

(b) Following the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations, the Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, agrees that no payment or distribution to any Second Lien Secured Party

pursuant to the provisions of this Agreement shall entitle any Third Lien Secured Party to exercise any rights of subrogation in respect thereof. Following the Discharge of Second Lien Obligations, but subject to the reinstatement as provided in Section 4.03, each Second Lien Secured Party will execute such documents, agreements, and instruments as any Third Lien Secured Party may reasonably request to evidence the transfer by subrogation to any such Person of an interest in the Second Lien Obligations resulting from payments or distributions to such Second Lien Secured Party by such Person, so long as all costs and expenses (including all reasonable legal fees and disbursements) incurred in connection therewith by such Second Lien Secured Party are paid by such Person upon request for payment thereof.

Section 4.09 Acknowledgment by the Secured Debt Representatives. Each of the Priority Lien Agent, for itself and on behalf of the other Priority Lien Secured Parties, the Second Lien Collateral Trustee, for itself and on behalf of the other Second Lien Secured Parties, and the Third Lien Collateral Trustee, for itself and on behalf of the other Third Lien Secured Parties, hereby acknowledges that this Agreement is a material inducement to enter into a business relationship, that each has relied on this Agreement to enter into the Priority Credit Agreement, the Second Lien Indenture and the Third Lien Indenture, as applicable, and all documentation related thereto, and that each will continue to rely on this Agreement in their related future dealings.

ARTICLE V
GRATUITOUS BAILMENT FOR PERFECTION OF CERTAIN SECURITY INTERESTS

Section 5.01 General. (a) Prior to the Discharge of Priority Lien Obligations, the Priority Lien Agent agrees that if it shall at any time hold a Priority Lien on any Collateral that can be perfected by the possession or control of such Collateral or of any Account in which such Collateral is held, and if such Collateral or any such Account is in fact in the possession or under the control of the Priority Lien Agent, the Priority Lien Agent will serve as gratuitous bailee for (i) the Second Lien Collateral Trustee for the sole purpose of perfecting the Second Lien of the Second Lien Collateral Trustee on such Collateral and (ii) the Third Lien Collateral Trustee for the sole purpose of perfecting the Third Lien of the Third Lien Collateral Trustee on such Collateral. It is agreed that the obligations of the Priority Lien Agent and the rights of the Second Lien Collateral Trustee, the other Second Lien Secured Parties, the Third Lien Collateral Trustee and the other Third Lien Secured Parties in connection with any such bailment arrangement will be in all respects subject to the provisions of Article II. Notwithstanding anything to the contrary herein, the Priority Lien Agent will be deemed to make no representation as to the adequacy of the steps taken by it to perfect the Second Lien or Third Lien on any such Collateral and shall have no responsibility, duty, obligation or liability to the Second Lien Collateral Trustee, any other Second Lien Secured Party, the Third Lien Collateral Trustee or any other Third Lien Secured Party or any other Person for such perfection or failure to perfect, it being understood that the sole purpose of this Article is to enable the Second Lien Secured Parties to obtain a perfected Second Lien and the Third Lien Secured Parties to obtain a perfected Third Lien in such Collateral to the extent, if any, that such perfection results from the possession or control of such Collateral or any such Account by the Priority Lien Agent. The Priority Lien Agent acting pursuant to this Section 5.01 shall not have by reason of the Priority Lien Security Documents, the Second Lien Security Documents, the Third Lien Security Documents, this Agreement or any other document or theory, a fiduciary relationship in respect of any Priority Lien Secured Party, the Second Lien Collateral Trustee, any Second Lien Secured Party, the Third Lien Collateral Trustee or any Third Lien Secured Party. Subject to Section 4.03, from and after the Discharge of Priority Lien Obligations, the Priority Lien Agent shall take all such actions in its power as shall reasonably be requested by the Second Lien Collateral Trustee (at the sole cost and expense of the Grantors) to transfer possession or control of such Collateral or any such Account (in each case to the extent the Second Lien Collateral Trustee has a Lien on such Collateral or Account after giving effect to

any prior or concurrent releases of Liens) to the Second Lien Collateral Trustee for the benefit of all Second Lien Secured Parties.

(b) Following the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations, the Second Lien Collateral Trustee agrees that if it shall at any time hold a Second Lien on any Collateral that can be perfected by the possession or control of such Collateral or of any Account in which such Collateral is held, and if such Collateral or any such Account is in fact in the possession or under the control of the Second Lien Collateral Trustee, the Second Lien Collateral Trustee will serve as gratuitous bailee for the Third Lien Collateral Trustee for the sole purpose of perfecting the Third Lien of the Third Lien Collateral Trustee on such Collateral. It is agreed that the obligations of the Second Lien Collateral Trustee and the rights of the Third Lien Collateral Trustee and the other Third Lien Secured Parties in connection with any such bailment arrangement will be in all respects subject to the provisions of Article II. Notwithstanding anything to the contrary herein, the Second Lien Collateral Trustee will be deemed to make no representation as to the adequacy of the steps taken by it to perfect the Third Lien on any such Collateral and shall have no responsibility, duty, obligation or liability to the Third Lien Collateral Trustee or any other Third Lien Secured Party or any other Person for such perfection or failure to perfect, it being understood that the sole purpose of this Article is to enable the Third Lien Secured Parties to obtain a perfected Third Lien in such Collateral to the extent, if any, that such perfection results from the possession or control of such Collateral or any such Account by the Second Lien Collateral Trustee. The Second Lien Collateral Trustee acting pursuant to this Section 5.01 shall not have by reason of the Second Lien Security Documents, the Third Lien Security Documents, this Agreement or any other document or theory, a fiduciary relationship in respect of any Second Lien Secured Party, the Third Lien Collateral Trustee or any Third Lien Secured Party. Subject to Section 4.03, from and after the Discharge of Second Lien Obligations, the Second Lien Collateral Trustee shall take all such actions in its power as shall reasonably be requested by the Third Lien Collateral Trustee (at the sole cost and expense of the Grantors) to transfer possession or control of such Collateral or any such Account (in each case to the extent the Third Lien Collateral Trustee has a Lien on such Collateral or Account after giving effect to any prior or concurrent releases of Liens) to the Third Lien Collateral Trustee for the benefit of all Third Lien Secured Parties.

Section 5.02 Deposit Accounts. (a) Prior to the Discharge of Priority Lien Obligations, to the extent that any Account is under the control of the Priority Lien Agent at any time, the Priority Lien Agent will act as gratuitous bailee for (i) the Second Lien Collateral Trustee for the purpose of perfecting the Liens of the Second Lien Secured Parties and (ii) the Third Lien Collateral Trustee for the purpose of perfecting the Liens of the Third Lien Secured Parties in such Accounts and the cash and other assets therein as provided in Section 3.01 (but will have no duty, responsibility or obligation to the Second Lien Secured Parties or the Third Lien Secured Parties (including, without limitation, any duty, responsibility or obligation as to the maintenance of such control, the effect of such arrangement or the establishment of such perfection) except as set forth in the last sentence of this Section 5.02(a)). Unless the Second Liens on such Collateral shall have been or concurrently are released, after the occurrence of the Discharge of Priority Lien Obligations, the Priority Lien Agent shall, at the request of the Second Lien Collateral Trustee, cooperate with the Grantors and the Second Lien Collateral Trustee (at the expense of the Grantors) in permitting control of any Accounts to be transferred (including by making such Accounts subject to new account control agreements) substantially concurrently with the occurrence of the Discharge of Priority Lien Obligations (but, in any event, by no later than sixty (60) days after the Discharge of Priority Lien Obligations) to the Second Lien Collateral Trustee (or for other arrangements with respect to each such Accounts satisfactory to the Second Lien Collateral Trustee to be made).

(b) Following the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations, to the extent that any Account is under the control of the Second Lien Collateral Trustee at any time, the Second Lien Collateral Trustee will act as gratuitous bailee for the Third Lien Collateral Trustee for the purpose of perfecting the Liens of the Third Lien Secured Parties in such Accounts and the cash and other assets therein as provided in Section 3.01 (but will have no duty, responsibility or obligation to the Third Lien Secured Parties (including, without limitation, any duty, responsibility or obligation as to the maintenance of such control, the effect of such arrangement or the establishment of such perfection) except as set forth in the last sentence of this Section 5.02(b)). Unless the Third Liens on such Collateral shall have been or concurrently are released, after the occurrence of Discharge of Second Lien Obligations, the Second Lien Collateral Trustee shall, at the request of the Third Lien Collateral Trustee, cooperate with the Grantors and the Third Lien Collateral Trustee (at the expense of the Grantors) in permitting control of any Accounts to be transferred (including by making such Accounts subject to new account control agreements) substantially concurrently with the occurrence of the Discharge of Second Lien Obligations (but, in any event, by no later than sixty (60) days after the Discharge of Priority Lien Obligations) to the Third Lien Collateral Trustee (or for other arrangements with respect to each such Accounts satisfactory to the Third Lien Collateral Trustee to be made).

ARTICLE VI
APPLICATION OF PROCEEDS; DETERMINATION OF AMOUNTS

Section 6.01 Application of Proceeds. (a) Prior to the Discharge of Priority Obligations, and regardless of whether an Insolvency or Liquidation Proceeding has been commenced, Collateral or Proceeds received in connection with the enforcement or exercise of any rights or remedies with respect to any portion of the Collateral will be applied:

(i) first, to the payment in full in cash of all Priority Lien Obligations that are not Excess Priority Lien Obligations,

(ii) second, to the payment in full in cash of all Second Lien Obligations,

(iii) third, to the payment in full in cash of all Third Lien Obligations,

(iv) fourth, to the payment in full in cash of all Excess Priority Lien Obligations, and

(v) fifth, to SM Energy or as otherwise required by applicable law.

(b) Following the Discharge of Priority Obligations but prior to the Discharge of Second Lien Obligations, and regardless of whether an Insolvency or Liquidation Proceeding has been commenced, Collateral or Proceeds received in connection with the enforcement or exercise of any rights or remedies with respect to any portion of the Collateral will be applied:

(i) first, to the payment in full of all Second Lien Obligations,

(ii) second, to the payment in full of all Third Lien Obligations, and

(iii) third, to SM Energy or as otherwise required by applicable law.

Section 6.02 Determination of Amounts. Whenever a Secured Debt Representative shall be required, in connection with the exercise of its rights or the performance of its obligations

hereunder, to determine the existence or amount of any Priority Lien Obligations, Second Lien Obligations or Third Lien Obligations (or the existence of any commitment to extend credit that would constitute Priority Lien Obligations, Second Lien Obligations or Third Lien Obligations), or the existence of any Lien securing any such obligations, or the Collateral subject to any such Lien, it may request that such information be furnished to it in writing by the other Secured Debt Representatives and shall be entitled to make such determination on the basis of the information so furnished; provided, however, that if a Secured Debt Representative shall fail or refuse reasonably promptly to provide the requested information, the requesting Secured Debt Representative shall be entitled to make any such determination by such method as it may, in the exercise of its good faith judgment, determine, including by reliance upon a certificate of SM Energy. Each Secured Debt Representative may rely conclusively, and shall be fully protected in so relying, on any determination made by it in accordance with the provisions of the preceding sentence (or as otherwise directed by a court of competent jurisdiction) and shall have no liability to SM Energy, any other Grantor or any of their subsidiaries, any Secured Party or any other Person as a result of such determination.

ARTICLE VII
NO RELIANCE; NO LIABILITY; OBLIGATIONS ABSOLUTE; CONSENT OF GRANTORS; ETC.

Section 7.01 No Reliance; Information. The Priority Lien Secured Parties, the Second Lien Secured Parties and the Third Lien Secured Parties shall have no duty to disclose to any Third Lien Secured Party, Second Lien Secured Party or to any Priority Lien Secured Party, as the case may be, any information relating to SM Energy or any of the other Grantors or any of their subsidiaries, or any other circumstance bearing upon the risk of non-payment of any of the Priority Lien Obligations, the Second Lien Obligations or the Third Lien Obligations, as the case may be, that is known or becomes known to any of them or any of their Affiliates. In the event any Priority Lien Secured Party, any Second Lien Secured Party or any Third Lien Secured Party, in its sole discretion, undertakes at any time or from time to time to provide any such information to, any Third Lien Secured Party, any Second Lien Secured Party or any Priority Lien Secured Party, as the case may be, it shall be under no obligation (a) to make, and shall not make or be deemed to have made, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of the information so provided, (b) to provide any additional information or to provide any such information on any subsequent occasion or (c) to undertake any investigation.

Section 7.02 No Warranties or Liability.

(a) The Priority Lien Agent, for itself and on behalf of the other Priority Lien Secured Parties, acknowledges and agrees that, except for the representations and warranties set forth in Article VIII, (i) neither the Second Lien Collateral Trustee nor any other Second Lien Secured Party has made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Second Lien Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon and (ii) neither the Third Lien Collateral Trustee nor any other Third Lien Secured Party has made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Third Lien Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon.

(b) The Second Lien Collateral Trustee, for itself and on behalf of the other Second Lien Secured Parties, acknowledges and agrees that, except for the representations and warranties

set forth in Article VIII, (i) neither the Priority Lien Agent nor any other Priority Lien Secured Party has made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Priority Lien Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon and (ii) neither the Third Lien Collateral Trustee nor any other Third Lien Secured Party has made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Third Lien Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon.

(c) The Third Lien Collateral Trustee, for itself and on behalf of the other Third Lien Secured Parties, acknowledges and agrees that, except for the representations and warranties set forth in Article VIII, (i) neither the Priority Lien Agent nor any other Priority Lien Secured Party has made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Priority Lien Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon and (ii) neither the Second Lien Collateral Trustee nor any other Second Lien Secured Party has made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Second Lien Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon.

(d) The Priority Lien Agent and the other Priority Lien Secured Parties shall have no express or implied duty to the Second Lien Collateral Trustee, any other Second Lien Secured Party, the Third Lien Collateral Trustee or any other Third Lien Secured Party, the Second Lien Collateral Trustee and the other Second Lien Secured Parties shall have no express or implied duty to the Priority Lien Agent, any other Priority Lien Secured Party, the Third Lien Collateral Trustee or any other Third Lien Secured Party, and the Third Lien Collateral Trustee shall have no express or implied duty to the Priority Lien Agent, any other Priority Lien Secured Party, the Second Lien Collateral Trustee or any other Second Lien Secured Party, to act or refrain from acting in a manner which allows, or results in, the occurrence or continuance of a default or an event of default under any Priority Lien Document, any Second Lien Document and any Third Lien Document (other than, in each case, this Agreement), regardless of any knowledge thereof which they may have or be charged with.

(e) Each of the Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party and the Third Lien Collateral Trustee, for itself and on behalf of each other Third Lien Secured Party, hereby waives any claim that may be had against the Priority Lien Agent or any other Priority Lien Secured Party arising out of any actions which the Priority Lien Agent or such Priority Lien Secured Party takes or omits to take (including actions with respect to the creation, perfection or continuation of Liens on any Collateral, actions with respect to the foreclosure upon, sale, release or depreciation of, or failure to realize upon, any Collateral, and actions with respect to the collection of any claim for all or only part of the Priority Lien Obligations from any account debtor, guarantor or any other party) in accordance with this Agreement and the Priority Lien Documents or the valuation, use, protection or release of any security for such Priority Lien Obligations. The Third Lien Collateral Trustee, for itself and on behalf each other Third Lien Secured Party, hereby waives any claim that may be had against the Second Lien Collateral Trustee or any other Second Lien Secured Party arising out of any actions which the Second Lien Collateral Trustee or such Second Lien Secured Party takes or omits to take following the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations (including actions with respect to the creation, perfection or continuation of Liens on any Collateral, actions with respect to the foreclosure upon, sale, release or depreciation of, or failure to realize upon, any Collateral, and actions with respect to the collection of any claim for all or

only part of the Second Lien Obligations from any account debtor, guarantor or any other party) in accordance with this Agreement and the Second Lien Documents or the valuation, use, protection or release of any security for such Second Lien Obligations.

Section 7.03 Obligations Absolute. The Lien priorities provided for herein and the respective rights, interests, agreements and obligations hereunder of the Priority Lien Agent and the other Priority Lien Secured Parties, the Second Lien Collateral Trustee and the other Second Lien Secured Parties, and the Third Lien Collateral Trustee and the other Third Lien Secured Parties shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of any Secured Debt Document;

(b) any change in the time, place or manner of payment of, or in any other term of (including the Replacing of), all or any portion of the Priority Lien Obligations, the Second Lien Obligations or the Third Lien Obligations, it being specifically acknowledged that, in the case of the Priority Lien Obligations, a portion of the Priority Lien Obligations consists or may consist of Indebtedness that is revolving in nature, and the amount thereof that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed;

(c) any amendment, waiver or other modification, whether by course of conduct or otherwise, of any Secured Debt Document;

(d) the securing of any Priority Lien Obligations, Second Lien Obligations or Third Lien Obligations with any additional collateral or guarantees, or any exchange, release, voiding, avoidance or non-perfection of any security interest in any Collateral or any other collateral or any release of any guarantee securing any Priority Lien Obligations, Second Lien Obligations or Third Lien Obligations;

(e) the commencement of any Insolvency or Liquidation Proceeding in respect of SM Energy or any other Grantor or any of their subsidiaries; or

(f) any other circumstances that otherwise might constitute a defense available to, or a discharge of, SM Energy or any other Grantor in respect of the Priority Lien Obligations, the Second Lien Obligations or the Third Lien Obligations.

Section 7.04 Grantors Consent. Each Grantor hereby consents to the provisions of this Agreement and the intercreditor arrangements provided for herein and agrees that the obligations of the Grantors under the Secured Debt Documents will in no way be diminished or otherwise affected by such provisions or arrangements (except as expressly provided herein).

ARTICLE VIII
REPRESENTATIONS AND WARRANTIES

Section 8.01 Representations and Warranties of Each Party. Each party hereto represents and warrants to the other parties hereto as follows:

(a) Such party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all requisite power and authority to enter into and perform its obligations under this Agreement.

(b) This Agreement constitutes a legal, valid and binding obligation of such party, 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.

(c) This Agreement has been duly executed and delivered by such party.

(d) The execution, delivery and performance by such party of this Agreement (i) do not require any consent or approval of, registration or filing with or any other action by any Governmental Authority of which the failure to obtain could reasonably be expected to have a Material Adverse Effect, (ii) will not violate any applicable law or regulation or any order of any Governmental Authority or any indenture, agreement or other instrument binding upon such party which could reasonably be expected to have a Material Adverse Effect and (iii) will not violate the charter, by-laws or other organizational documents of such party.

Section 8.02 Representations and Warranties of Each Representative. Each of the Priority Lien Agent, the Second Lien Collateral Trustee and the Third Lien Collateral Trustee represents and warrants to the other parties hereto that it is authorized under the Priority Credit Agreement, the Second Lien Collateral Trust Agreement and the Third Lien Collateral Trust Agreement, as the case may be, to enter into this Agreement.

ARTICLE IX
MISCELLANEOUS

Section 9.01 Notices. 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 telecopy, as follows:

(a) if to the Original Priority Lien Agent, to it at:

1700 Lincoln, Sixth Floor, MAC C7300-061,
Denver, Colorado 80202,
Attention of Jonathan Herrick (Telecopy No. 303/863-6765),

with a copy to:
1525 West W.T. Harris Blvd - 1B1, Mailcode: MACD1109-019,
Charlotte, NC 28262,
Attention of Agency Services
(Telecopy No. 704/590-2782)

(b) if to the Original Second Lien Collateral Trustee, to it at:

UMB Bank, N.A.
5555 San Felipe Street, Suite 870
Houston, Texas 77056
Telephone: 713-300-0586
Facsimile: 214-389-5949
Email: Shazia.Flores@umb.com
Attention: Shazia Flores

(c) if to any other Secured Debt Representative, to such address as specified in the Priority Confirmation Joinder.

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 (if a Business Day) and on the next Business Day thereafter (in all other cases) if delivered by hand or overnight courier service or sent by telecopy or on the date five Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 9.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 9.01. As agreed to in writing among SM Energy, the Priority Lien Agent, the Second Lien Collateral Trustee and the Third Lien Collateral Trustee from time to time, notices and other communications may also be delivered by e-mail to the e-mail address of a representative of the applicable person provided from time to time by such person.

Section 9.02 Waivers; Amendment. (a) No failure or delay on the part of any party hereto in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the parties hereto 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 consent to any departure by any party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 9.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on any party hereto in any case shall entitle such party to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be terminated, waived, amended or modified except pursuant to an agreement or agreements in writing entered into by each Secured Debt Representative; provided, however, that this Agreement may be amended from time to time as provided in Section 4.04. Any amendment of this Agreement that is proposed to be effected without the consent of a Secured Debt Representative as permitted by the proviso to the preceding sentence shall be submitted to such Secured Debt Representative for its review at least 5 Business Days prior to the proposed effectiveness of such amendment.

Section 9.03 Actions Upon Breach; Specific Performance. (a) (i) Prior to the Discharge of Priority Lien Obligations, if any Second Lien Secured Party or Third Lien Secured Party, contrary to this Agreement, commences or participates in any action or proceeding against any Grantor or the Collateral, such Grantor, with the prior written consent of the Priority Lien Agent, may interpose as a defense or dilatory plea the making of this Agreement, and any Priority Lien Secured Party may intervene and interpose such defense or plea in its or their name or in the name of such Grantor and (ii) following the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations, if any Third Lien Secured Party, contrary to this Agreement, commences or participates in any action or proceeding against any Grantor or the Collateral, such Grantor, with the prior written consent of the Second Lien Collateral Trustee, may interpose as a defense or dilatory plea the making of this Agreement, and any Second Lien Secured Party may intervene and interpose such defense or plea in its or their name or in the name of such Grantor.

(b) (i) Prior to the Discharge of Priority Lien Obligations, should any Second Lien Secured Party or Third Lien Secured Party, contrary to this Agreement, in any way take, attempt to or threaten to take any action with respect to the Collateral (including any attempt to realize upon or enforce any remedy with respect to this Agreement), or take any other action in violation of this Agreement or fail to take any action required by this Agreement, the Priority Lien Agent or any other Priority Lien Secured Party (in its own name or in the name of the relevant Grantor) or the relevant Grantor, with the prior written consent of the Priority Lien Agent, (A) may obtain relief against such Second Lien Secured Party or Third Lien Secured Party, as applicable, by injunction, specific performance and/or other appropriate equitable relief, it being understood and agreed by each of the Second Lien Collateral Trustee on behalf of each Second Lien Secured Party and the Third Lien Collateral Trustee on behalf of each Third Lien Secured Party that (I) the Priority Lien Secured Parties' damages from its actions may at that time be difficult to ascertain and may be irreparable, and (II) each Second Lien Secured Party and Third Lien Secured Party waives any defense that the Grantors and/or the Priority Lien Secured Parties cannot demonstrate damage and/or be made whole by the awarding of damages, and (B) shall be entitled to damages, as well as reimbursement for all reasonable and documented costs and expenses incurred in connection with any action to enforce the provisions of this Agreement and (ii) following the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations, should any Third Lien Secured Party, contrary to this Agreement, in any way take, attempt to or threaten to take any action with respect to the Collateral (including any attempt to realize upon or enforce any remedy with respect to this Agreement), or take any other action in violation of this Agreement or fail to take any action required by this Agreement, the Second Lien Collateral Trustee or any other Second Lien Secured Party (in its own name or in the name of the relevant Grantor) or the relevant Grantor, with the prior written consent of the Second Lien Collateral Trustee, (A) may obtain relief against such Third Lien Secured Party by injunction, specific performance and/or other appropriate equitable relief, it being understood and agreed by the Third Lien Collateral Trustee on behalf of each Third Lien Secured Party that (I) the Second Lien Secured Parties' damages from its actions may at that time be difficult to ascertain and may be irreparable, and (II) each Third Lien Secured Party waives any defense that the Grantors and/or the Second Lien Secured Parties cannot demonstrate damage and/or be made whole by the awarding of damages, and (B) shall be entitled to damages, as well as reimbursement for all reasonable and documented costs and expenses incurred in connection with any action to enforce the provisions of this Agreement.

Section 9.04 Parties in Interest. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, as well as the other Secured Parties, all of whom are intended to be bound by, and to be third party beneficiaries of, this Agreement.

Section 9.05 Survival of Agreement. All covenants, agreements, representations and warranties made by any party in this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement.

Section 9.06 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original but all of which when taken together shall constitute a single contract. Delivery of an executed signature page to this Agreement by facsimile or other electronic transmission (e.g. .pdf) shall be as effective as delivery of a manually signed counterpart of this Agreement.

Section 9.07 Severability. Any provision of this Agreement 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; and the invalidity of a particular provision in a particular jurisdiction shall

not invalidate such provision in any other jurisdiction. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 9.08 Governing Law; Jurisdiction; Consent to Service of Process. (a) THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES (BUT GIVING EFFECT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATION LAW).

(b) Each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any party hereto may otherwise have to bring any action or proceeding relating to this Agreement in the courts of any jurisdiction.

(c) Each party hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (b) of this Section 9.08. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

Section 9.09 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 9.10 Headings. Article, Section and Annex headings used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

Section 9.11 Conflicts. In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of any Secured Debt Documents, the provisions of this

Agreement shall control; provided, however, that if any of the provisions of the Second Lien Security Documents or Third Lien Security Documents limit, qualify or conflict with the duties imposed by the provisions of the TIA (if any), in each case, to the extent that the TIA is applicable, the TIA shall control.

Section 9.12 Provisions Solely to Define Relative Rights. The provisions of this Agreement are and are intended solely for the purpose of defining the distinct and separate relative rights of the Priority Lien Secured Parties, the Second Lien Secured Parties and the Third Lien Secured Parties. None of SM Energy, any other Grantor or any other creditor thereof shall have any rights or obligations hereunder, except as expressly provided in this Agreement (provided that nothing in this Agreement (other than Sections 4.01, 4.02, 4.04, or 4.05) is intended to or will amend, waive or otherwise modify the provisions of the Priority Credit Agreement, the Second Lien Indenture or the Third Lien Indenture, as applicable), and except as expressly provided in this Agreement neither SM Energy nor any other Grantor may rely on the terms hereof (other than Sections 4.01, 4.02, 4.04, or 4.05, Article VII and Article IX). Nothing in this Agreement is intended to or shall impair the obligations of SM Energy or any other Grantor, which are absolute and unconditional, to pay the Obligations under the Secured Debt Documents as and when the same shall become due and payable in accordance with their terms. Notwithstanding anything to the contrary herein or in any Secured Debt Document, the Grantors shall not be required to act or refrain from acting pursuant to this Agreement, any Priority Lien Document, any Second Lien Document or any Third Lien Document with respect to any Collateral in any manner that would cause a default under any Priority Lien Document.

Section 9.13 Certain Terms Concerning the Second Lien Collateral Trustee and the Third Lien Collateral Trustee . (a) The Second Lien Collateral Trustee is executing and delivering this Agreement solely in its capacity as such and pursuant to direction set forth in the Second Lien Collateral Trust Agreement; and in so doing, the Second Lien Collateral Trustee shall not be responsible for the terms or sufficiency of this Agreement for any purpose. The Second Lien Collateral Trustee shall have no duties or obligations under or pursuant to this Agreement other than such duties and obligations as may be expressly set forth in this Agreement as duties and obligations on its part to be performed or observed. In entering into this Agreement, or in taking (or forbearing from) any action under or pursuant to the Agreement, the Second Lien Collateral Trustee shall have and be protected by all of the rights, immunities, indemnities and other protections granted to it under the Second Lien Indenture and the other Second Lien Documents (including without limitation Article 5 and Section 7.9 of the Second Lien Collateral Trust Agreement).

(b) The Third Lien Collateral Trustee is executing and delivering this Agreement solely in its capacity as such and pursuant to direction set forth in the Third Lien Collateral Trust Agreement; and in so doing, the Third Lien Collateral Trustee shall not be responsible for the terms or sufficiency of this Agreement for any purpose. The Third Lien Collateral Trustee shall have no duties or obligations under or pursuant to this Agreement other than such duties and obligations as may be expressly set forth in this Agreement as duties and obligations on its part to be performed or observed. In entering into this Agreement, or in taking (or forbearing from) any action under or pursuant to the Agreement, the Third Lien Collateral Trustee shall have and be protected by all of the rights, immunities, indemnities and other protections granted to it under any Third Lien Indenture and the Third Lien Documents.

Section 9.14 Certain Terms Concerning the Priority Lien Agent, the Second Lien Collateral Trustee and the Third Lien Collateral Trustee. None of the Priority Lien Agent, the Second Lien Collateral Trustee or the Third Lien Collateral Trustee shall have any liability or responsibility for the actions or omissions of any other Secured Party, or for any other Secured Party's compliance with (or

failure to comply with) the terms of this Agreement. None of the Priority Lien Agent, the Second Lien Collateral Trustee or the Third Lien Collateral Trustee shall have individual liability to any Person if it shall mistakenly pay over or distribute to any Secured Party (or SM Energy) any amounts in violation of the terms of this Agreement, so long as the Priority Lien Agent, the Second Lien Collateral Trustee or the Third Lien Collateral Trustee, as the case may be, is acting in good faith. Each party hereto hereby acknowledges and agrees that each of the Priority Lien Agent, the Second Lien Collateral Trustee and the Third Lien Collateral Trustee is entering into this Agreement solely in its capacity under the Priority Lien Documents, the Second Lien Documents and the Third Lien Documents, respectively, and not in its individual capacity. (a) The Priority Lien Agent shall not be deemed to owe any fiduciary duty to (i) the Second Lien Collateral Trustee or any other Second Lien Representative or any other Second Lien Secured Party or (ii) the Third Lien Collateral Trustee or any other Third Lien Representative or any other Third Lien Secured Party; (b) the Second Lien Collateral Trustee shall not be deemed to owe any fiduciary duty to (i) the Priority Lien Agent or any other Priority Lien Secured Party or (ii) the Third Lien Collateral Trustee or any other Third Lien Representative or any other Third Lien Secured Party; and (c) the Third Lien Collateral Trustee shall not be deemed to owe any fiduciary duty to (i) the Priority Lien Agent or any other Priority Lien Secured Party or (ii) the Second Lien Collateral Trustee or any other Second Lien Representative or any other Second Lien Secured Party.

Section 9.15 Authorization of Secured Agents. By accepting the benefits of this Agreement and the other Priority Lien Security Documents, each Priority Lien Secured Party authorizes the Priority Lien Agent to enter into this Agreement and to act on its behalf as collateral agent hereunder and in connection herewith. By accepting the benefits of this Agreement and the other Second Lien Security Documents, each Second Lien Secured Party authorizes the Second Lien Collateral Trustee to enter into this Agreement and to act on its behalf as collateral agent hereunder and in connection herewith. By accepting the benefits of this Agreement and the other Third Lien Security Documents, each Third Lien Secured Party authorizes the Third Lien Collateral Trustee to enter into this Agreement and to act on its behalf as collateral agent hereunder and in connection herewith.

Section 9.16 Further Assurances. Each of the Priority Lien Agent, for itself and on behalf of the other Priority Lien Secured Party, the Second Lien Collateral Trustee, for itself and on behalf of the other Second Lien Secured Parties, the Third Lien Collateral Trustee, for itself and on behalf of the other Third Lien Secured Parties, and each Grantor party hereto, for itself and on behalf of its subsidiaries, agrees that it will execute, or will cause to be executed, any and all further documents, agreements and instruments, and take all such further actions, as may be required under any applicable law, or which the Priority Lien Agent, the Second Lien Collateral Trustee or the Third Lien Collateral Trustee may reasonably request, to effectuate the terms of this Agreement, including the relative Lien priorities provided for herein.

Section 9.17 Relationship of Secured Parties. Nothing set forth herein shall create or evidence a joint venture, partnership or an agency or fiduciary relationship among the Secured Parties. None of the Secured Parties nor any of their respective directors, officers, agents or employees shall be responsible to any other Secured Party or to any other Person for any Grantor's solvency, financial condition or ability to repay the Priority Lien Obligations, the Second Lien Obligations or the Third Lien Obligations, or for statements of any Grantor, oral or written, or for the validity, sufficiency or enforceability of the Priority Lien Documents, the Second Lien Documents or the Third Lien Documents, or any security interests granted by any Grantor to any Secured Party in connection therewith. Each Secured Party has entered into its respective financing agreements with the Grantors based upon its own independent investigation, and none of the Priority Lien Agent, the Second Lien Collateral Trustee or the Third Lien Collateral Trustee makes any warranty or representation to the other Secured Debt

Representatives or the Secured Parties for which it acts as agent nor does it rely upon any representation of the other agents or the Secured Parties for which it acts as agent with respect to matters identified or referred to in this Agreement.

Section 9.18 Third Lien Provisions. Notwithstanding any of the foregoing provisions, until such time as the Third Lien Collateral Trustee has, pursuant to the terms hereof (including but not limited to Section 4.04(c)), entered into, and, for itself and on behalf of the Third Lien Secured Parties, agreed to be bound by the terms of, this Agreement and executed a Priority Joinder Confirmation, the provisions of this Agreement relating to the Third Lien Obligations (including, but not limited to, the definitions of "Additional Third Lien Debt Facility", "Additional Third Lien Documents", "Additional Third Lien Obligations", "Additional Third Lien Secured Parties", "Additional Third Lien Security Documents", "Third Lien", "Third Lien Collateral", "Third Lien Collateral Trust Agreement", "Third Lien Collateral Trustee", "Third Lien Debt", "Third Lien Documents", "Third Lien First Standstill Period", "Third Lien Indenture", "Third Lien Indenture Notes", "Third Lien Obligations", "Third Lien Representative", "Third Lien Second Standstill Period", "Third Lien Secured Parties", "Third Lien Security Documents" and "Third Lien Substitute Facility" and provisions regarding priority, enforcement actions, Standstill Periods, release of Liens, Insolvency or Liquidation Proceedings, reinstatement, amendments to Third Lien Documents and application of proceeds) shall not be operative.

[SIGNATURES BEGIN NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Priority Lien Agent

By: /s/ Jonathan Herrick
Name: Jonathan Herrick
Title: Director

UMB BANK, N.A.,
as Second Lien Collateral Trustee

By: /s/ Shazia Flores
Name: Shazia Flores
Title: Vice President

ACKNOWLEDGED AND AGREED AS OF THE DATE FIRST ABOVE WRITTEN:

SM ENERGY COMPANY

By: /s/ David W. Copeland
Name: David W. Copeland
Title: Executive Vice President, General Counsel and Corporate Secretary

ANNEX I

Provision for the Second Lien Indenture, any Additional Second Lien Debt Facility, the Second Lien Documents, the Initial Third Lien Debt Facility, any Additional Third Lien Debt Facility and the Third Lien Documents

Reference is made to the Intercreditor Agreement, dated as of June 17, 2020, between WELLS FARGO BANK, NATIONAL ASSOCIATION, as Priority Lien Agent (as defined therein), and UMB BANK, N.A., as Second Lien Collateral Trustee (as defined therein) ([as amended, supplemented, amended and restated or otherwise modified and in effect from time to time,] the "Intercreditor Agreement"). Each holder of [any Additional Second Lien Obligations][Initial Third Lien Obligations][Additional Third Lien Obligations], by its acceptance of such [Additional Second Lien Obligations][Initial Third Lien Obligations][Additional Third Lien Obligations] i) consents to the subordination of Liens provided for in the Intercreditor Agreement, ii) agrees that it will be bound by, and will take no actions contrary to, the provisions of the Intercreditor Agreement and iii) authorizes and instructs the [Second/Third] Lien Collateral Trustee on behalf of each [Second/Third] Lien Secured Party (as defined therein) to enter into the Intercreditor Agreement as [Second/Third] Lien Collateral Trustee on behalf of such [Second/Third] Lien Secured Parties. The foregoing provisions are intended as an inducement to the lenders under the Priority Credit Agreement to extend credit to SM Energy and such lenders are intended third party beneficiaries of such provisions and the provisions of the Intercreditor Agreement.

Provision for all Priority Lien Security Documents, Indenture Second Lien Security Documents, any Additional Second Lien Security Documents, the Initial Third Lien Security Documents and the Additional Third Lien Security Documents that Grant a Security Interest in Collateral

Reference is made to the Intercreditor Agreement, dated as of June 17, 2020, between WELLS FARGO BANK, NATIONAL ASSOCIATION, as Priority Lien Agent (as defined therein), and UMB BANK, N.A., as Second Lien Collateral Trustee (as defined therein) ([as amended, supplemented, amended and restated or otherwise modified and in effect from time to time,] the "Intercreditor Agreement"). Each Person that is secured hereunder, by accepting the benefits of the security provided hereby, [(i) consents (or is deemed to consent), to the subordination of Liens provided for in the Intercreditor Agreement,][1] [(i)][(ii)] agrees (or is deemed to agree) that it will be bound by, and will take no actions contrary to, the provisions of the Intercreditor Agreement, [(ii)][(iii)] authorizes (or is deemed to authorize) the [Priority Lien Agent] [Second Lien Collateral Trustee] [Third Lien Collateral Trustee] on behalf of such Person to enter into, and perform under, the Intercreditor Agreement and [(iii)][(iv)] acknowledges (or is deemed to acknowledge) that a copy of the Intercreditor Agreement was delivered, or made available, to such Person.

Notwithstanding any other provision contained herein, this Agreement, the Liens created hereby and the rights, remedies, duties and obligations provided for herein are subject in all respects to the provisions of the Intercreditor Agreement and, to the extent provided therein, the applicable Security Documents (as defined in the Intercreditor Agreement). In the event of any conflict or inconsistency between the provisions of this Agreement and the Intercreditor Agreement, the provisions of the Intercreditor Agreement shall control.

[1] This bracketed language would not apply to the Priority Lien Security Documents

EXHIBIT A
to Intercreditor Agreement

[FORM OF]
PRIORITY CONFIRMATION JOINDER

Reference is made to the Intercreditor Agreement, dated as of June 17, 2020 (as amended, supplemented, amended and restated or otherwise modified and in effect from time to time, the "Intercreditor Agreement") between WELLS FARGO BANK, NATIONAL ASSOCIATION, as Priority Lien Agent for the Priority Lien Secured Parties (as defined therein), and UMB BANK, N.A., as Second Lien Collateral Trustee for the Second Lien Secured Parties (as defined therein).

Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Intercreditor Agreement. This Priority Confirmation Joinder is being executed and delivered pursuant to Section 4.04 [(a)][(b)][(c)] of the Intercreditor Agreement as a condition precedent to the debt for which the undersigned is acting as representative being entitled to the rights and obligations of being [Additional [Second/Third] Lien Obligations][Initial Third Lien Obligations] under the Intercreditor Agreement.

1 . Joinder. The undersigned, [_____], a [_____], (the "New Representative") as [trustee] [collateral trustee] [administrative agent] [collateral agent] under that certain *[describe applicable indenture, credit agreement or other document governing the Additional Second Lien Obligations or [Initial/Additional] Third Lien Obligations]* hereby:

(a) represents that the New Representative has been authorized to become a party to the Intercreditor Agreement on behalf of the [Priority Lien Secured Parties under a Priority Substitute Credit Facility] [Indenture Second Lien Secured Parties under the Second Lien Substitute Facility] [Additional Second Lien Secured Parties under the Additional Second Lien Debt Facility] [Initial Third Lien Secured Parties under the Initial Third Lien Debt Facility] [Additional Third Lien Secured Parties under the Additional Third Lien Debt Facility] as [a Priority Lien Agent under a Priority Substitute Credit Facility] [a Second Lien Collateral Trustee under a Second Lien Substitute Facility] [a Third Lien Collateral Trustee under a Third Lien Substitute Facility] [Secured Debt Representative] [Second Lien Representative] [Third Lien Representative] under the Intercreditor Agreement for all purposes thereof on the terms set forth therein, and to be bound by the terms of the Intercreditor Agreement as fully as if the undersigned had executed and delivered the Intercreditor Agreement as of the date thereof; and

(b) agrees that its address for receiving notices pursuant to the Intercreditor Agreement shall be as follows:

[Address];

2. Priority Confirmation.

[*Option A: to be used if additional debt constitutes Priority Debt*] The undersigned New Representative, on behalf of itself and each Priority Lien Secured Party for which the undersigned is acting as [Administrative Agent] hereby agrees, for the benefit of all Secured Parties and each future Secured Debt Representative, and as a condition to being treated as Priority Lien Obligations under the Intercreditor Agreement, that the New Representative is bound by the provisions of the Intercreditor Agreement, including the provisions relating to the ranking of Priority Liens. [or]

[*Option B: to be used if additional debt constitutes a Series of Second Lien Debt*] The undersigned New Representative, on behalf of itself and each holder of Obligations in respect of the Series of Second Lien Debt [that constitutes a Second Lien Substitute Facility] for which the undersigned is acting as [Second Lien Representative][Second Lien Collateral Trustee] hereby agrees, for the benefit of all Secured Parties and each future Secured Debt Representative, and as a condition to being treated as Secured Debt under the Intercreditor Agreement, that:

(a) all Second Lien Obligations will be and are secured equally and ratably by all Second Liens at any time granted by SM Energy or any other Grantor to secure any Obligations in respect of such Series of Second Lien Debt, whether or not upon property otherwise constituting Collateral for such Series of Second Lien Debt, and that all such Second Liens will be enforceable by the Second Lien Collateral Trustee with respect to such Series of Second Lien Debt for the benefit of all Second Lien Secured Parties equally and ratably;

(b) the New Representative and each holder of Obligations in respect of the Series of Second Lien Debt for which the undersigned is acting as [Second Lien Representative] are bound by the provisions of the Intercreditor Agreement, including the provisions relating to the ranking of Priority Liens, Second Liens and Third Liens and the order of application of proceeds from enforcement of Priority Liens, Second Liens and Third Liens; and

(c) the New Representative and each holder of Obligations in respect of the Series of Second Lien Debt for which the undersigned is acting as [Second Lien Representative] appoints the Second Lien Collateral Trustee and consents to the terms of the Intercreditor Agreement and the performance by the Second Lien Collateral Trustee of, and directs the Second Lien Collateral Trustee to perform, its obligations under the Intercreditor Agreement and the Second Lien Collateral Trust Agreement, together with all such powers as are reasonably incidental thereto. **[or]**

[*Option C: to be used if additional debt constitutes a Series of Third Lien Debt*] The undersigned New Representative, on behalf of itself and each holder of Obligations in respect of the Series of Third Lien Debt [that constitutes a Third Lien Substitute Facility] for which the undersigned is acting as [Third Lien Representative][Third Lien Collateral Trustee] hereby agrees, for the benefit of all Secured Parties and each future Secured Debt Representative, and as a condition to being treated as Secured Debt under the Intercreditor Agreement, that:

(a) all Third Lien Obligations will be and are secured equally and ratably by all Third Liens at any time granted by SM Energy or any other Grantor to secure any Obligations in respect of such Series of Third Lien Debt, whether or not upon property otherwise constituting Collateral for such Series of Third Lien Debt, and that all such Third Liens will be enforceable by the Third Lien Collateral Trustee with respect to such Series of Third Lien Debt for the benefit of all Third Lien Secured Parties equally and ratably;

(b) the New Representative and each holder of Obligations in respect of the Series of Third Lien Debt for which the undersigned is acting as [*Third Lien Representative*] [*Third Lien Collateral Trustee*] are bound by the provisions of the Intercreditor Agreement, including the provisions relating to the ranking of Priority Liens, Second Liens and Third Liens and the order of application of proceeds from enforcement of Priority Liens, Second Liens and Third Liens; and

[(c) the New Representative and each holder of Obligations in respect of the Series of Third Lien Debt for which the undersigned is acting as [*Third Lien Representative*] appoints the Third Lien

Collateral Trustee and consents to the terms of the Intercreditor Agreement and the performance by the Third Lien Collateral Trustee of, and directs the Third Lien Collateral Trustee to perform, its obligations under the Intercreditor Agreement and the Third Lien Collateral Trust Agreement, together with all such powers as are reasonably incidental thereto.][2]

3. Full Force and Effect of Intercreditor Agreement . Except as expressly supplemented hereby, the Intercreditor Agreement shall remain in full force and effect.

4. Governing Law and Miscellaneous Provisions . The provisions of Article IX of the Intercreditor Agreement will apply with like effect to this Priority Confirmation Joinder.

5. Expenses. SM Energy agrees to reimburse each Secured Debt Representative for its reasonable out of pocket expenses in connection with this Priority Confirmation Joinder, including the reasonable fees, other charges and disbursements of counsel.

[2] Necessary only in the case of an incurrence of Additional Third Lien Obligations.

IN WITNESS WHEREOF, the parties hereto have caused this Priority Confirmation Joinder to be executed by their respective officers or representatives as of [_____, 20____].

[insert name of New Representative]

By: _____
Name: _____
Title: _____

The Priority Lien Agent hereby acknowledges receipt of this Priority Confirmation Joinder [and agrees to act as Priority Lien Agent for the New Representative and the holders of the Obligations represented thereby]:

as Priority Lien Agent

By: _____
Name: _____
Title: _____

The Second Lien Collateral Trustee hereby acknowledges receipt of this Priority Confirmation Joinder [and agrees to act as Second Lien Collateral Trustee for the New Representative and the holders of the Obligations represented thereby]:

as Second Lien Collateral Trustee

By: _____
Name: _____
Title: _____

[The Third Lien Collateral Trustee hereby acknowledges receipt of this Priority Confirmation Joinder [and agrees to act as Third Lien Collateral Trustee for the New Representative and the holders of the Obligations represented thereby]:

as Third Lien Collateral Trustee

By: _____
Name: _____
Title: _____

Acknowledged and Agreed to by:

SM ENERGY COMPANY, as Borrower

By: _____
Name: _____
Title: _____

EXHIBIT B
to Intercreditor Agreement

SECURITY DOCUMENTS

PART A.

List of Priority Lien Security Documents

1. Third Amended and Restated Pledge and Security Agreement dated as of September 28, 2018 among SM Energy Company, each of the other Grantors party thereto, and the Priority Lien Agent as Administrative Agent for the Priority Lien Secured Parties, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

2. Amended and Restated Security Agreement dated as of September 28, 2018 among SM Energy Company, each of the other Grantors party thereto, and the Priority Lien Agent as Administrative Agent for the Priority Lien Secured Parties, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

3. Each mortgage and deed of trust entered into, executed and delivered by SM Energy Company or any other Grantor creating (or purporting to create) a Lien upon Collateral in favor of the Priority Lien Agent, to secure the Priority Lien Obligations, except to the extent released by the Priority Lien Agent in accordance with this Agreement and the Priority Lien Security Documents, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

4. Each UCC Financing Statement filed in connection with the documents listed in items 1 through 3 of this Part A.

PART B.

List of Indenture Second Lien Security Documents

1. Second Lien Pledge and Security Agreement, dated as of June 17, 2020, by and among SM Energy Company, each of the other Grantors party thereto, and the Second Lien Collateral Trustee, as Collateral Trustee for the ratable benefit of the Parity Lien Secured Parties (as defined therein) as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

2. Second Lien Security Agreement, dated as of June 17, 2020, by and among SM Energy Company, each of the other Grantors party thereto, and the Second Lien Collateral Trustee, as Collateral Trustee for the ratable benefit of the Parity Lien Secured Parties (as defined therein), as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

3. Each mortgage and deed of trust entered into, executed and delivered by SM Energy Company or any other Grantor creating (or purporting to create) a Lien upon Collateral in favor of the Second Lien Collateral Trustee, to secure the Second Lien Obligations, except to the extent released by the Second Lien Collateral Trustee in accordance with this Agreement and the Second Lien Security Documents, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

4. Each UCC Financing Statement filed in connection with the documents listed in items 1 through 3 of this Part B.

PART C.

List of Initial Third Lien Security Documents

1. None as of the date hereof.

EXHIBIT 10.2

Execution Version

SECOND LIEN PLEDGE AND SECURITY AGREEMENT

Between

SM ENERGY COMPANY,
as Pledgor

and

UMB BANK, N.A.,
as Collateral Trustee

Effective as of June 17, 2020

Reference is made to the Intercreditor Agreement, dated as of June 17, 2020, among, *inter alios*, WELLS FARGO BANK, NATIONAL ASSOCIATION, as Priority Lien Agent (as defined therein), and UMB BANK, N.A., as Second Lien Collateral Trustee (as defined therein) (as amended, supplemented, amended and restated or otherwise modified and in effect from time to time, the "Intercreditor Agreement"). Each Parity Lien Secured Party that is secured hereunder, by accepting the benefits of the security provided hereby, (i) consents (or is deemed to consent), to the subordination of Liens provided for in the Intercreditor Agreement, (ii) agrees (or is deemed to agree) that it will be bound by, and will take no actions contrary to, the provisions of the Intercreditor Agreement, (iii) authorizes (or is deemed to authorize) the Second Lien Collateral Trustee on behalf of such Parity Lien Secured Party to enter into, and perform under, the Intercreditor Agreement and (iv) acknowledges (or is deemed to acknowledge) that a copy of the Intercreditor Agreement was delivered, or made available, to such Parity Lien Secured Party.

Notwithstanding any other provision contained herein, this Agreement, the Liens created hereby and the rights, remedies, duties and obligations provided for herein are subject in all respects to the provisions of the Intercreditor Agreement and, to the extent provided therein, the applicable Security Documents (as defined in the Intercreditor Agreement). In the event of any conflict or inconsistency between the provisions of this Agreement and the Intercreditor Agreement, the provisions of the Intercreditor Agreement shall control.

SECOND LIEN PLEDGE AND SECURITY AGREEMENT

THIS SECOND LIEN PLEDGE AND SECURITY AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this "Agreement") is made effective as of June 17, 2020, by SM ENERGY COMPANY, a Delaware corporation with principal offices at 1775 Sherman Street, Suite 1200, Denver, Colorado 80203 (the "Pledgor"), in favor of UMB BANK, N.A., a national banking association with offices at 5555 San Felipe Street, Suite 870, Houston, Texas 77056, as Collateral Trustee (in such capacity, " Collateral Trustee") for the benefit of the Parity Lien Secured Parties (as defined in the Indenture referred to below).

RECITALS

A. Pledgor and UMB Bank, N.A., as trustee (the "Trustee"), are entering into (i) that certain Indenture dated as of even date herewith (as amended, restated, supplemented or otherwise modified from time to time, the "Indenture"), by and between Pledgor and the Trustee pursuant to which Pledgor will issue $446,675,000 aggregate principal amount of its 10.00% Senior Secured Notes due 2025 (the "Notes") subject to the terms and conditions set forth in the Indenture and (ii) that certain Collateral Trust Agreement, dated as of even date herewith (as amended, restated, supplemented, or otherwise modified from time to time, the "Collateral Trust Agreement ") by and among Pledgor, the Trustee, the other Parity Lien Representatives party thereto from time to time and Collateral Trustee.

B. The Indenture requires that Pledgor grant to Collateral Trustee for the ratable benefit of the Parity Lien Secured Parties a security interest in the Collateral (as defined herein) to secure the payment and performance in full when due of the Parity Lien Obligations.

C. To secure the Parity Lien Obligations, Pledgor has agreed to grant to Collateral Trustee for the ratable benefit of the Parity Lien Secured Parties, a security interest in, all right, title and interest of Pledgor in the Collateral.

NOW, THEREFORE, (i) to comply with the terms and conditions of the Indenture and (ii) for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Pledgor and Collateral Trustee hereby agree as follows:

ARTICLE 1

SECURITY INTEREST

Section 1.01 Pledge. Pledgor hereby pledges, assigns and grants to Collateral Trustee, for the benefit of the Parity Lien Secured Parties, a security interest in and right of set-off against the assets referred to in Section 1.02 (the "Collateral") to secure the prompt payment and performance of the Parity Lien Obligations and the performance by Pledgor of this Agreement.

Section 1.02 Collateral. The Collateral consists of the following types or items of property which are now owned or hereafter acquired by Pledgor:

(a) 100% of the Capital Stock owned or held of record or beneficially by Pledgor in each of its Subsidiaries (other than its Immaterial Subsidiaries) that is not an Excluded Foreign Subsidiary.

(b) (i) 65% of the outstanding voting Capital Stock and (ii) 100% of the outstanding non-voting Capital Stock owned or held of record or beneficially by Pledgor in each of its Subsidiaries (other than its Immaterial Subsidiaries) that is an Excluded Foreign Subsidiary, in each case, to the extent the pledge of such Capital Stock will not result in adverse tax consequences to Pledgor.

(c) (i) The certificates or instruments, if any, representing such membership interests and such units, (ii) all dividends (cash, stock or otherwise), cash, instruments, rights to subscribe, purchase or sell and all other rights and property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such membership interests or such units, (iii) all replacements and substitutions for any of the property referred to in this Section 1.02, including, without limitation, claims against third parties, and (iv) the proceeds, interest, profits and other income of or on any of the property referred to in this Section 1.02.

It is expressly contemplated that additional securities or other property may from time to time be pledged, assigned or granted to Collateral Trustee, for the benefit of the Parity Lien Secured Parties, as additional security for the Parity Lien Obligations, and the term "Collateral" as used herein shall be deemed for all purposes hereof to include all such additional membership interests, units and property, together with all other property of the types described above related thereto.

Section 1.03 Transfer of Collateral. Subject to the Intercreditor Agreement, all certificates or instruments representing or evidencing the Pledged Securities shall be delivered to and held pursuant hereto by Collateral Trustee or a Person designated by Collateral Trustee and shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank, or (in the case of either certificated or uncertificated securities) Collateral Trustee shall have been provided with evidence that the Pledged Securities have been otherwise delivered to Collateral Trustee in accordance with Section 8.301 of the Code, all in form and substance satisfactory to Collateral Trustee. Notwithstanding the preceding sentence, subject to the Intercreditor Agreement, at Collateral Trustee's sole discretion, all Pledged Securities must be delivered or transferred in such manner as to permit Collateral Trustee to meet the requirements of Section 8.303(a)(3) of the Code to the extent of its security interest. Subject to the Intercreditor Agreement, Collateral Trustee shall have the right, at any time in its sole discretion and without notice to Pledgor, to transfer to or to register in the name of Collateral Trustee or any of its nominees any or all of the Pledged Securities, subject only to the revocable rights specified in Section 4.02. In addition, subject to the Intercreditor Agreement, Collateral Trustee shall have the right at any time to exchange certificates or instruments representing or evidencing Pledged Securities for certificates or instruments of smaller or larger denominations.

ARTICLE 2

DEFINITIONS

Section 2.01 Terms Defined Above. As used in this Agreement, the terms defined above shall have the meanings respectively assigned to them.

Section 2.02 Certain Definitions. As used in this Agreement, the following terms shall have the following meanings, unless the context otherwise requires:

"Act of Parity Lien Debtholders" has the meaning set forth in the Collateral Trust Agreement.

"Code" means Articles 1 through 9 of the Uniform Commercial Code as in effect from time to time in the State of New York.

"Collateral Trust Agreement" has the meaning set forth in the preliminary statements hereto.

"Event of Default" means any event specified in Section 6.01.

"Intercreditor Agreement" has the meaning set forth in the legend appearing on the cover page of this Agreement.

"Obligor" means any Person, other than Pledgor, liable (whether directly or indirectly, primarily or secondarily) for the payment or performance of any of the Parity Lien Obligations whether as maker, co-maker, endorser, guarantor, accommodation party, general partner or otherwise.

"Pledged Securities" means all of the securities and other property (whether or not the same constitutes a "security" under the Code) referred to in Sections 1.02(a), 1.02(b) or 1.02(c) and all additional securities, if any, constituting Collateral under this Agreement.

"Secured Obligations" has the meaning set forth in Section 3.04 of this Agreement.

Section 2.03 Capitalized and Uncapitalized Terms. Unless otherwise defined herein, or the context hereof otherwise requires, each capitalized term defined in either the Indenture or the Code is used in this Agreement with the same meaning attributed thereto; provided, that, if the definition given to such term in the Indenture conflicts with the definition given to such term in the Code, the definition given to such term in the Indenture shall control to the extent legally allowable; and if any definition given to such term in Article 9 of the Code conflicts with the definition given to such term in any other article of the Code, the definition given to such term in Article 9 of the Code shall prevail. Unless otherwise indicated by the context herein, all uncapitalized terms that are defined in the Code shall have the respective meanings given to them in Articles 8 and 9 of the Code.

Section 2.04 Section References. Unless otherwise provided for herein, all references herein to Sections are to Sections of this Agreement.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES

In order to induce Collateral Trustee to accept this Agreement, Pledgor represents and warrants to Collateral Trustee (which representations and warranties will survive the creation and payment of the Secured Obligations) that:

Section 3.01 Ownership of Collateral; Encumbrances. Pledgor is the record and beneficial owner of the Collateral, which is, except as otherwise permitted by the Indenture or any other applicable Parity Lien Document, free and clear of any Lien, and Pledgor has full right, power and authority to pledge, assign and grant a security interest in the Collateral to Collateral Trustee, for the benefit of the Parity Lien Secured Parties.

Section 3.02 No Required Consent. No authorization, consent, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body (other than the filing of financing statements in favor of Collateral Trustee) is required for the due execution, delivery and performance by Pledgor of this Agreement, the grant by Pledgor of the security interest granted by this Agreement or the perfection of such security interest.

Section 3.03 Pledged Securities. The Pledged Securities have been duly authorized and validly issued, and, with respect to Pledged Securities issued by a corporation, are fully paid and non-assessable.

Section 3.04 Second Priority Security Interest. The pledge of Pledged Securities pursuant to this Agreement, the delivery to Collateral Trustee of the certificates representing the Pledged Securities accompanied by stock powers duly executed in blank and the filing of appropriate financing statements in the relevant locations create a valid and perfected second priority security interest in the Collateral (subject to the Intercreditor Agreement and Liens expressly permitted under clauses (1), (7), (14), (17), (25), (30) and (32) of the definition of "Permitted Liens" in the Indenture), enforceable against Pledgor and all third parties (subject to the Intercreditor Agreement) and securing the payment of all Notes Obligations and all of the other Parity Lien Obligations of any Obligor (all such Notes Obligations and all such other Parity Lien Obligations, collectively, being the "Secured Obligations"). Collateral Trustee acknowledges that pursuant to the Security Documents associated with the Senior Secured Credit Agreement, Pledgor is required to deliver to the Priority Lien Agent (as defined in the Intercreditor Agreement) any certificates representing the Pledged Securities, accompanied by stock powers duly executed in blank, and that the Intercreditor Agreement governs the rights of Collateral Trustee with respect to such certificates and stock powers that have been so delivered to the Priority Lien Agent.

ARTICLE 4

COVENANTS AND AGREEMENTS

Pledgor will at all times comply with the covenants and agreements contained in this Article 4, from the date hereof and for so long as any part of the Secured Obligations (other than any indemnity which is not yet due and payable) are outstanding.

Section 4.01 Sale, Disposition or Encumbrance of Collateral. Except as permitted by the Indenture or by this Agreement, Pledgor will not in any way (a) encumber any of the Collateral, or (b) sell, pledge, assign, lend or otherwise dispose of or transfer any of the Collateral to or in favor of any Person (other than Collateral Trustee, for the benefit of the Parity Lien Secured Parties).

Section 4.02 Voting Rights; Dividends or Distributions. Until both (a) an Event of Default shall have occurred and be continuing and (b) either (i) the Notes Obligations have become due and payable at the end of their stated maturity and have not been paid, (ii) the other Secured Obligations have become due at their stated maturity and have not been paid, (iii) the Notes Obligations have been declared due and payable pursuant to Article Seven of the Indenture, or (iv) Collateral Trustee has given notice to Pledgor of Collateral Trustee's intent to exercise its rights under Section 6.02, and, in each case, subject to the Intercreditor Agreement and the Collateral Trust Agreement:

(a) Pledgor shall be entitled to exercise any and all voting, management and/or other consensual rights and powers inuring to an owner of the Collateral or any part thereof for any purpose not inconsistent with the terms of this Agreement and the other Parity Lien Documents.

(b) Pledgor shall be entitled to receive and retain (free and clear of and no longer subject to this Agreement or the Lien created pursuant to this Agreement) any and all dividends, distributions and interest paid in respect of the Collateral; provided, however, that, subject to the Intercreditor Agreement, any and all

(i) dividends and interest paid or payable other than in cash in respect of, and instruments and other property received, receivable or otherwise distributed in respect of, or in exchange for (including, without limitation, any certificate, share or interest purchased or exchanged in connection with a tender offer or merger agreement), any Collateral,

(ii) dividends and other distributions paid or payable in cash in respect of any Collateral in connection with a partial or total liquidation, dissolution or reclassification, and

(iii) cash paid, payable or otherwise distributed in respect of principal of, or in redemption of, or in exchange for, any Collateral,

shall be, and shall be promptly delivered to Collateral Trustee to hold as, Collateral and shall, if received by Pledgor, be received in trust for the benefit of Collateral Trustee, be segregated from

the other property or funds of Pledgor, and be promptly delivered to Collateral Trustee as Collateral in the same form as so received (with any necessary endorsement), provided, further, however, that in no event shall the foregoing proviso be applicable to, or prevent Pledgor from receiving and retaining any securities that are not pledged or intended or required to be pledged to Collateral Trustee pursuant to any Security Document, including this Agreement.

Section 4.03 Records and Information. Pledgor shall keep accurate and complete records of the Collateral (including proceeds, payments, distributions, income and profits). Pledgor will promptly provide written notice to Collateral Trustee of all information which in any way affects (a) the filing of any financing statement or other public notices or recordings pertaining to the perfection of a security interest in the Collateral or (b) the delivery and possession of items of Collateral for the purpose of perfecting a security interest in the Collateral.

Section 4.04 Certain Liabilities. Pledgor hereby assumes all liability for the Collateral, the security interest created hereunder and any use, possession, maintenance, management, enforcement or collection of any or all of the Collateral.

Section 4.05 Further Assurances. Upon the request of Collateral Trustee (including a request made at the direction of an Act of Parity Lien Debtholders pursuant to the Collateral Trust Agreement), subject to the Intercreditor Agreement, Pledgor shall (at Pledgor's expense) execute (if applicable) and deliver all such assignments, certificates, instruments, securities, financing statements, notifications to financial intermediaries, clearing corporations, issuers of securities or other third parties or other documents and give further assurances and do all other acts and things as Collateral Trustee may reasonably request (including a request made at the direction of an Act of Parity Lien Debtholders pursuant to the Collateral Trust Agreement) to perfect Collateral Trustee's interest in the Collateral or to protect, enforce or otherwise effect Collateral Trustee's rights and remedies hereunder.

Section 4.06 Rights to Sell. Subject, in each case, to the Intercreditor Agreement, if Collateral Trustee shall determine to exercise its rights to sell all or any of the Collateral pursuant to its rights hereunder, Pledgor agrees that, upon request of Collateral Trustee (including a request made at the direction of an Act of Parity Lien Debtholders pursuant to the Collateral Trust Agreement), Pledgor will, at its own expense:

(a) execute and deliver, and use all reasonable efforts to cause each issuer of the Collateral contemplated to be sold and the directors and officers thereof to execute and deliver, all such instruments and documents, and do or cause to be done all such other acts and things, as may be necessary or, in the reasonable opinion of Collateral Trustee, advisable to register such Collateral under the provisions of the Securities Act of 1933, as from time to time amended (the "Securities Act"), if such registration is, in the reasonable opinion of Collateral Trustee, necessary or advisable to effect a public distribution of the Collateral, and to cause the registration statement relating thereto to become effective and to remain effective for such period as prospectuses are required by law to be furnished, and to make all amendments and supplements thereto and to the related prospectus which, in the reasonable opinion of Collateral Trustee, are necessary or

advisable, all in conformity with the requirements of the Securities Act and the rules and regulations of the Securities and Exchange Commission applicable thereto;

(b) use all reasonable efforts to qualify the Collateral under the state securities or "Blue Sky" laws and to obtain all necessary governmental approvals for the sale of the Collateral, as requested by Collateral Trustee;

(c) use all reasonable efforts to cause each such issuer to make available to its security holders, as soon as practicable, an earnings statement which will satisfy the provisions of Section 11(a) of the Securities Act; and

(d) use all reasonable efforts to do or cause to be done all such others acts and things as may be necessary to make such sale of the Collateral or any part thereof valid and binding and in compliance with applicable law.

Pledgor further acknowledges the impossibility of ascertaining the amount of damages which would be suffered by Collateral Trustee by reason of the failure by Pledgor to perform any of the covenants contained in this Section 4.06 and consequently agrees that if Pledgor shall fail to perform any of such covenants, it shall pay (to the extent permitted by law), as liquidated damages, and not as penalty, an amount (in no event to exceed the amount of Secured Obligations then outstanding) equal to the value of the Collateral affected by Pledgor's failure to perform any of the covenants contained in this Section 4.06 on the date Collateral Trustee shall demand compliance with this Section 4.06. Such amount is a reasonable approximation of the damages suffered by Collateral Trustee as a result of Pledgor's failure to perform the covenants contained in this Section 4.06.

ARTICLE 5

RIGHTS, DUTIES AND POWERS OF COLLATERAL TRUSTEE

The following rights, duties and powers of Collateral Trustee are applicable irrespective of whether an Event of Default occurs and is continuing:

Section 5.01 Discharge Encumbrances. Collateral Trustee may, at its option, three (3) Business Days after receipt by Pledgor of prior written notice from Collateral Trustee of its intent to do so, discharge any Liens at any time levied or placed on the Collateral that are prohibited by the Indenture and that are not being contested in good faith by appropriate proceedings. Pledgor agrees to reimburse Collateral Trustee within five (5) days after demand for any payment so made, plus interest thereon from the date of Collateral Trustee's demand at the rate per annum equal to 2% plus the rate otherwise applicable to the Notes at such time.

Section 5.02 Resignation or Removal of Collateral Trustee. Collateral Trustee may resign (or be removed) in accordance with Section 6.1 of the Collateral Trust Agreement, and shall be discharged of its rights, powers, duties and remedies in accordance with the Collateral Trust Agreement. Any successor Collateral Trustee appointed pursuant to the Collateral Trust

Agreement shall be entitled to all the rights, powers, duties and remedies of Collateral Trustee hereunder.

Section 5.03 Cumulative and Other Rights.

(a) The rights, powers and remedies of Collateral Trustee hereunder are in addition to all rights, powers and remedies given by law or in equity. The exercise by Collateral Trustee of any one or more of the rights, powers and remedies herein shall not be construed as a waiver of any other rights, powers and remedies, including, without limitation, any other rights of set-off.

(b) Collateral Trustee shall be entitled to rely upon written instructions given to it by an Act of Parity Lien Debtholders in requiring or requesting the performance of certain actions or the delivery of certain information to be delivered at the request of, or to the extent required by, Collateral Trustee hereunder. Collateral Trustee shall be entitled to rely upon any written notice, statement, certificate, order or other document believed by it to be genuine and correct and to have been signed or sent by the proper person, and, with respect to all matters pertaining to this Agreement and its duties hereunder, upon advice of counsel selected by it.

(c) In addition to the rights of Collateral Trustee hereunder, Collateral Trustee shall have the rights, protections and immunities given to it as Collateral Trustee under the Indenture and the Collateral Trust Agreement, and such are incorporated by reference herein, *mutatis mutandis*.

(d) Collateral Trustee shall have no obligation to take any discretionary action hereunder, except pursuant to an Act of Parity Lien Debtholders.

Section 5.04 Disclaimer of Certain Duties. The powers conferred upon Collateral Trustee by this Agreement are to protect its interest in the Collateral and shall not impose any duty upon Collateral Trustee to exercise any such powers. Pledgor hereby agrees that Collateral Trustee shall not be liable for, nor shall the indebtedness evidenced by the Secured Obligations be diminished by, Collateral Trustee's delay or failure to collect upon, foreclose, sell, take possession of or otherwise obtain value for the Collateral.

Section 5.05 Custody and Preservation of the Collateral. Collateral Trustee shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which comparable secured parties accord comparable collateral, it being understood and agreed, however, that Collateral Trustee shall not have responsibility for ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Collateral, whether or not Collateral Trustee has or is deemed to have knowledge of such matters, or taking any necessary steps to preserve rights against Persons or entities with respect to any Collateral.

ARTICLE 6

EVENTS OF DEFAULT

Section 6.01 Events. An "Event of Default" (as defined in the Indenture) which has occurred and is continuing shall constitute an Event of Default under this Agreement.

Section 6.02 Remedies. Subject, in each case, to the Intercreditor Agreement and the Collateral Trust Agreement, upon the occurrence and during the continuance of any Event of Default, Collateral Trustee may take any or all of the following actions without notice or demand to Pledgor (except that Collateral Trustee will not take any action in the case of paragraphs (b) and (f) below until five (5) Business Days after receipt by Pledgor of written notice from Collateral Trustee of its intent to do so):

(a) Subject to applicable provisions contained in the Indenture, declare all or part of the Secured Obligations immediately due and payable and enforce payment of the same by Pledgor or any Obligor.

(b) Sell, in one or more sales and in one or more parcels, or otherwise dispose of any or all of the Collateral in any commercially reasonable manner as Collateral Trustee may elect, in a public or private transaction, at any location as deemed reasonable by Collateral Trustee either for cash or credit or for future delivery at such price as Collateral Trustee may reasonably deem fair, and (unless prohibited by the Code, as adopted in any applicable jurisdiction) Collateral Trustee may be the purchaser of any or all Collateral so sold and may apply upon the purchase price therefor any Secured Obligations secured hereby. Any such sale or transfer by Collateral Trustee either to itself or to any other Person shall be absolutely free from any claim of right by Pledgor, including any equity or right of redemption, stay or appraisal which Pledgor has or may have under any rule of law, regulation or statute now existing or hereafter adopted. Upon any such sale or transfer, Collateral Trustee shall have the right to deliver, assign and transfer to the purchaser or transferee thereof the Collateral so sold or transferred. If Collateral Trustee reasonably deems it advisable to do so, it may restrict the bidders or purchasers of any such sale or transfer to Persons or entities who will represent and agree that they are purchasing the Collateral for their own account and not with the view to the distribution or resale of any of the Collateral. Collateral Trustee may, at its discretion, provide for a public sale, and any such public sale shall be held at such time or times within ordinary business hours and at such place or places as Collateral Trustee may fix in the notice of such sale. Collateral Trustee shall not be obligated to make any sale pursuant to any such notice. Collateral Trustee may, without notice or publication, adjourn any public or private sale by announcement at any time and place fixed for such sale, and such sale may be made at any time or place to which the same may be so adjourned. In the event any sale or transfer hereunder is not completed or is defective in the opinion of Collateral Trustee, such sale or transfer shall not exhaust the rights of Collateral Trustee hereunder, and Collateral Trustee shall have the right to cause one or more subsequent sales or transfers to be made hereunder. If only part of the Collateral is sold or transferred such that the Secured Obligations remain outstanding (in whole or in part), Collateral Trustee's rights and remedies hereunder shall not be exhausted, waived or modified, and Collateral Trustee is specifically empowered to make one or more successive sales or transfers until all the Collateral shall be sold or transferred and all the

Secured Obligations are paid. In the event that Collateral Trustee elects not to sell the Collateral, Collateral Trustee retains its rights to dispose of or utilize the Collateral or any part or parts thereof in any manner authorized or permitted by law or in equity, and to apply the proceeds of the same towards payment of the Secured Obligations.

(c) Apply proceeds of the disposition of the Collateral to the Secured Obligations in any manner elected by Collateral Trustee and permitted by the Code or otherwise permitted by law or in equity. Such application may include, without limitation, the reasonable attorneys' fees and legal expenses incurred by Collateral Trustee.

(d) Appoint any Person as agent to perform any act or acts necessary or incident to any sale or transfer by Collateral Trustee of the Collateral.

(e) Receive, change the address for delivery, open and dispose of mail addressed to Pledgor, and to execute, assign and endorse negotiable and other instruments for the payment of money, documents of title or other evidences of payment, shipment or storage for any form of Collateral on behalf of and in the name of Pledgor.

(f) Exercise all other rights and remedies permitted by law or in equity.

Section 6.03 Attorney-in-Fact. Subject to the Intercreditor Agreement, Pledgor hereby irrevocably appoints Collateral Trustee as Pledgor's attorney-in-fact, with full authority in the place and stead of Pledgor and in the name of Pledgor or otherwise, from time to time in Collateral Trustee's discretion upon the occurrence and during the continuance of an Event of Default, but at Pledgor's cost and expense, three (3) Business Days after receipt by Pledgor of written notice from Collateral Trustee of its intent to do so, to, subject to the Intercreditor Agreement, take any action and to execute any assignment, certificate, financing statement, stock power, notification, document or instrument which Collateral Trustee may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, to receive, endorse and collect all instruments made payable to Pledgor representing any dividend, interest payment or other distribution in respect of the Collateral or any part thereof and to give full discharge for the same.

Section 6.04 Liability for Deficiency. If any sale or other disposition of Collateral by Collateral Trustee in compliance with the Parity Lien Documents and applicable law or any other action of Collateral Trustee hereunder in compliance with the Parity Lien Documents and applicable law results in reduction of the Secured Obligations, such action will not release Pledgor from its liability to Collateral Trustee for any unpaid Secured Obligations, including (to the extent permitted by law) costs, charges and expenses incurred in the liquidation of Collateral, together with interest thereon until paid at the rate per annum equal to 2% plus the rate otherwise applicable to the Notes at such time, and the same shall be immediately due and payable to Collateral Trustee at Collateral Trustee's address set forth in the opening paragraph of this Agreement.

Section 6.05 Reasonable Notice. If any applicable provision of any law requires Collateral Trustee to give reasonable notice of any sale or disposition or other action, Pledgor hereby agrees that ten (10) days' prior written notice shall constitute reasonable notice thereof. Such notice, in the case of public sale, shall state the time and place fixed for such sale and, in the case of private sale, the time after which such sale is to be made.

Section 6.06 Pledged Securities. Subject, in each case, to the Intercreditor Agreement and the Collateral Trust Agreement, upon both (x) the occurrence and during the continuance of an Event of Default and (y) either (i) the Notes Obligations have become due and payable at the end of their stated maturity and have not been paid, (ii) the other Secured Obligations have become due at their stated maturity and have not been paid, (iii) the Notes Obligations have been declared due and payable pursuant to Article Seven of the Indenture, or (iv) Collateral Trustee has given notice to Pledgor of Collateral Trustee's intent to exercise its rights under Section 6.02:

(a) All rights of Pledgor to receive the dividends and interest payments which it would otherwise be authorized to receive and retain pursuant to Section 4.02 shall cease, and all such rights shall thereupon become vested in Collateral Trustee who shall thereupon have the sole right to receive and hold as Collateral such dividends and interest payments, but Collateral Trustee shall have no duty to receive and hold such dividends and interest payments and shall not be responsible for any failure to do so or delay in so doing.

(b) All dividends and interest payments which are received by Pledgor contrary to the provisions of this Section 6.06 shall be received in trust for the benefit of Collateral Trustee, shall be segregated from other funds of Pledgor and shall be promptly paid over to Collateral Trustee as Collateral in the same form as so received (with any necessary endorsement).

(c) Collateral Trustee may exercise any and all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to any of the Pledged Securities as if it were the absolute owner thereof, including without limitation, the right to exchange at its discretion, any and all of the Pledged Securities upon the merger, consolidation, reorganization, recapitalization or other readjustment of any issuer of such Pledged Securities or upon the exercise by any such issuer or Collateral Trustee of any right, privilege or option pertaining to any of the Pledged Securities and in connection therewith, to deposit and deliver any and all of the Pledged Securities with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as it may determine, all without liability except to account for property actually received by it, but Collateral Trustee shall have no duty to exercise any of the aforesaid rights, privileges or options and shall not be responsible for any failure to do so or delay in so doing.

Section 6.07 Non-judicial Enforcement. To the extent permitted by law, Collateral Trustee may enforce its rights hereunder without prior judicial process or judicial hearing, and to the extent permitted by law Pledgor expressly waives any and all legal rights which might otherwise require Collateral Trustee to enforce its rights by judicial process.

ARTICLE 7

MISCELLANEOUS PROVISIONS

Section 7.01 Intercreditor Agreement. Notwithstanding any provision to the contrary in this Agreement, in the event of any conflict or inconsistency between the provisions of the Intercreditor Agreement and this Agreement, the provisions of the Intercreditor Agreement shall prevail. So long as the Priority Lien Agent is acting as bailee and as agent for perfection on behalf of Collateral Trustee pursuant to the terms of the Intercreditor Agreement, any obligation of Pledgor in this Agreement that requires (or any representation or warranty hereunder to the extent that it would have the effect of requiring) delivery of Collateral to, or the possession or control of Collateral with, Collateral Trustee shall be deemed complied with and satisfied (or, in the case of any representation or warranty hereunder, shall be deemed to be true) if such delivery of Collateral is made to, or such possession or control of Collateral is with, the Priority Lien Agent.

Section 7.02 Notices. All notices and other communications provided for hereunder shall be delivered in the manner provided in the Collateral Trust Agreement, in the case of Pledgor or Collateral Trustee, addressed to it at its address specified in Section 7.6 of the Collateral Trust Agreement; or, as to any party, at such other address as shall be designated by such party in a written notice to the other parties. All such notices and other communications shall be effective when and as provided in the Collateral Trust Agreement.

Section 7.03 Amendments and Waivers. Collateral Trustee's acceptance of partial or delinquent payments or any forbearance, failure or delay by Collateral Trustee in exercising any right, power or remedy hereunder shall not be deemed a waiver of any obligation of Pledgor or any Obligor, or of any right, power or remedy of Collateral Trustee; and no partial exercise of any right, power or remedy shall preclude any other or further exercise thereof. Collateral Trustee may remedy any Event of Default hereunder or in connection with the Secured Obligations without waiving the Event of Default so remedied. Pledgor hereby agrees that if Collateral Trustee agrees to a waiver of any provision hereunder, or an exchange of or release of the Collateral, or the addition or release of any Obligor or other Person, any such action shall not constitute a waiver of any of Collateral Trustee's other rights or of Pledgor's obligations hereunder. This Agreement may be amended only by an instrument in writing executed jointly by Pledgor and Collateral Trustee and may be supplemented only by documents delivered or to be delivered in accordance with the express terms hereof. Delivery of an executed counterpart of any amendment or waiver of any provision of this Agreement by facsimile, .pdf or any other electronic means of delivery shall be effective as delivery of an original executed counterpart thereof.

Section 7.04 Copy as Financing Statement. A photocopy or other reproduction of this Agreement may be delivered by Pledgor or Collateral Trustee to any financial intermediary or other third party for the purpose of transferring or perfecting any or all of the Pledged Securities to Collateral Trustee or its designee or assignee.

Section 7.05 Possession of Collateral. Collateral Trustee shall be deemed to have possession of any Collateral in transit to it or set apart for it (or, in either case, any of its agents, affiliates or correspondents).

Section 7.06 Redelivery of Collateral. Subject to the Intercreditor Agreement, if any sale or transfer of Collateral by Collateral Trustee results in full satisfaction of the Secured Obligations, and after such sale or transfer and discharge there remains a surplus of proceeds, Collateral Trustee will, subject to the Intercreditor Agreement, deliver to Pledgor such excess proceeds in a commercially reasonable time; provided, however, that Collateral Trustee shall not have any liability for any interest, cost or expense in connection with any delay in delivering such proceeds to Pledgor.

Section 7.07 Governing Law; Jurisdiction; Consent to Service of Process; Waiver of Jury Trial. The terms and provisions of Sections 7.13 and 7.14 of the Collateral Trust Agreement are hereby incorporated herein by reference, *mutatis mutandis*, with the same force and effect as if fully set forth herein, and the parties hereto agree to such terms.

Section 7.08 Continuing Security Agreement.

(a) Except as otherwise provided by applicable law (including, without limitation, Section 9.620 of the Code), no action taken or omission to act by Collateral Trustee hereunder, including, without limitation, any exercise of voting or consensual rights pursuant to Section 6.06 or any other action taken or inaction pursuant to Section 6.02, shall be deemed to constitute a retention of the Collateral in satisfaction of the Secured Obligations or otherwise to be in full satisfaction of the Secured Obligations, and the Secured Obligations shall remain in full force and effect, until Collateral Trustee shall have applied payments (including, without limitation, collections from Collateral) towards the Secured Obligations in the full amount then outstanding or until such subsequent time as is hereinafter provided in subsection (b) below.

(b) To the extent that any payments on the Secured Obligations or proceeds of the 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 Secured Obligations so satisfied shall be revived and continue as if such payment or proceeds had not been received by Collateral Trustee, and Collateral Trustee's security interests, rights, powers and remedies hereunder shall continue in full force and effect. In such event, this Agreement shall be automatically reinstated if it shall theretofore have been terminated pursuant to Section 7.09.

Section 7.09 Termination. The grant of a security interest hereunder (and all of Collateral Trustee's rights, powers and remedies in connection therewith) shall remain and continue in full force and effect until released in accordance with the Collateral Trust Agreement. Upon the complete payment of the Secured Obligations (other than any indemnity which is not yet due and payable), Collateral Trustee, at the written request and expense of Pledgor, will release, reassign and transfer the Collateral to Pledgor and declare this Agreement to be of no

further force or effect. Notwithstanding the foregoing, Section 4.04 and Section 7.08(b) shall survive the termination of this Agreement.

Section 7.10 Counterparts; Effectiveness. This Agreement may be executed in two or more counterparts. Each counterpart is deemed an original, but all such counterparts taken together constitute one and the same instrument. This Agreement becomes effective upon the execution hereof by Pledgor and delivery of the same to Collateral Trustee, and it is not necessary for Collateral Trustee to execute any acceptance hereof or otherwise signify or express its acceptance hereof. Delivery of an executed counterpart of a signature page to this Agreement by facsimile, .pdf or any other electronic means of delivery shall be effective as delivery of an original executed counterpart thereof.

Section 7.11 Limitation by Law. All rights, remedies and powers provided in this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Agreement are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they shall not render this Agreement invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

Section 7.12 Interest. It is the intention of the parties hereto to conform strictly to usury laws applicable to Collateral Trustee or any other Parity Lien Secured Party. Accordingly, if the transactions contemplated hereby would be usurious under applicable state or federal law, then, notwithstanding anything to the contrary in this Agreement or in any other Parity Lien Document, it is agreed as follows: the aggregate of all consideration which constitutes interest under law applicable to Collateral Trustee or any other Parity Lien Secured Party that is contracted for, taken, reserved, charged or received under the Secured Obligations, this Agreement or under any other Parity Lien Document or otherwise in connection with the Obligations shall under no circumstances exceed the maximum amount allowed by such applicable law, in the event that the maturity of the Secured Obligations is accelerated for any reason, or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to Collateral Trustee or any other Parity Lien Secured Party may never include more than such maximum amount, and excess interest, if any, provided for in this Agreement, any other Parity Lien Document or otherwise shall be cancelled automatically and, if theretofore paid, shall be credited by Collateral Trustee on the principal amount of the Secured Obligations (or, to the extent that the principal amount of the Secured Obligations shall have been or would thereby be paid in full, refunded by Collateral Trustee to Pledgor). The right to accelerate the maturity of the Secured Obligations does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and neither Collateral Trustee nor any other Parity Lien Secured Party intend to collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid to Collateral Trustee or any other Parity Lien Secured Party for the use, forbearance or detention of sums included in the initial Secured Obligations shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of the Secured Obligations

until payment in full so that the rate or amount of interest on account of the relevant Secured Obligations does not exceed the applicable usury ceiling, if any.

[*Signatures begin on next page*]

PLEDGOR: **SM ENERGY COMPANY**

By: /s/ David W. Copeland
Name: David W. Copeland
Title: Executive Vice President, General Counsel and Corporate Secretary

COLLATERAL TRUSTEE: **UMB BANK, N.A.**, as Collateral Trustee

By: /s/ Shazia Flores
Name: Shazia Flores
Title: Vice President

EXHIBIT 10.3

Execution Version

SECOND LIEN SECURITY AGREEMENT

Between

SM ENERGY COMPANY,
as Grantor

and

UMB BANK, N.A.,
as Collateral Trustee,

Effective as of June 17, 2020

Reference is made to the Intercreditor Agreement, dated as of June 17, 2020, among, *inter alios*, WELLS FARGO BANK, NATIONAL ASSOCIATION, as Priority Lien Agent (as defined therein), and UMB BANK, N.A., as Second Lien Collateral Trustee (as defined therein) (as amended, supplemented, amended and restated or otherwise modified and in effect from time to time, the "Intercreditor Agreement"). Each Parity Lien Secured Party that is secured hereunder, by accepting the benefits of the security provided hereby, (i) consents (or is deemed to consent), to the subordination of Liens provided for in the Intercreditor Agreement, (ii) agrees (or is deemed to agree) that it will be bound by, and will take no actions contrary to, the provisions of the Intercreditor Agreement, (iii) authorizes (or is deemed to authorize) the Second Lien Collateral Trustee on behalf of such Parity Lien Secured Party to enter into, and perform under, the Intercreditor Agreement and (iv) acknowledges (or is deemed to acknowledge) that a copy of the Intercreditor Agreement was delivered, or made available, to such Parity Lien Secured Party.

Notwithstanding any other provision contained herein, this Agreement, the Liens created hereby and the rights, remedies, duties and obligations provided for herein are subject in all respects to the provisions of the Intercreditor Agreement and, to the extent provided therein, the applicable Security Documents (as defined in the Intercreditor Agreement). In the event of any conflict or inconsistency between the provisions of this Agreement and the Intercreditor Agreement, the provisions of the Intercreditor Agreement shall control.

SECOND LIEN SECURITY AGREEMENT

THIS SECOND LIEN SECURITY AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this "Agreement") is made effective as of June 17, 2020, by SM ENERGY COMPANY, a Delaware corporation (the " Issuer") with principal offices at 1775 Sherman Street, Suite 1200, Denver, Colorado 80203 (the Issuer together with any other entity that may become a party hereto as provided herein, each a "Grantor", and collectively, the "Grantors"), in favor of UMB BANK, N.A., a national banking association with offices at 5555 San Felipe Street, Suite 870, Houston, Texas 77056, as Collateral Trustee (in such capacity, "Collateral Trustee") for the benefit of the Parity Lien Secured Parties (as defined in the Indenture referred to below).

RECITALS

A. The Issuer and UMB Bank, N.A., as trustee (the "Trustee"), are entering into (i) that certain Indenture dated as of even date herewith (as amended, restated, supplemented or otherwise modified from time to time, the "Indenture"), by and between the Issuer and the Trustee pursuant to which the Issuer will issue $446,675,000 aggregate principal amount of its 10.00% Senior Secured Notes due 2025 (the "Notes") subject to the terms and conditions set forth in the Indenture and (ii) that certain Collateral Trust Agreement, dated as of even date herewith (as amended, restated, supplemented, or otherwise modified from time to time, the "Collateral Trust Agreement"), by and among the Issuer, the Trustee, the other Parity Lien Representatives party thereto from time to time and Collateral Trustee.

B. The Indenture requires that each Grantor grant to Collateral Trustee for the ratable benefit of the Parity Lien Secured Parties a security interest in the Collateral (as defined herein) to secure the payment and performance in full when due of the Secured Obligations.

C. To secure the Secured Obligations, each Grantor has agreed to grant to Collateral Trustee for the ratable benefit of the Parity Lien Secured Parties, a security interest in, all right, title and interest of such Grantor in the Collateral.

NOW, THEREFORE, in order to comply with the terms and conditions of the Indenture and the other Parity Lien Documents and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1

SECURITY INTEREST

Section 1.01 Collateral. Each Grantor hereby pledges, assigns and grants to Collateral Trustee, on behalf of and for the ratable benefit of the Parity Lien Secured Parties, a security interest in all of its right, title and interest in, to and under the following property and other assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of such Grantor (including under any trade name or derivations thereof), and whether owned or

consigned by or to, or leased from or to, such Grantor, and regardless of where located (all of which will be collectively referred to as the "Collateral"):

(a) all Accounts;

(b) all cash or cash equivalents;

(c) all Deposit Accounts;

(d) all Securities Accounts;

(e) all Commodity Accounts;

(f) and all accessions to, substitutions for and replacements, Proceeds, insurance proceeds and products of the foregoing, together with all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto;

to secure the prompt and complete payment and performance of the Secured Obligations.

ARTICLE 2

DEFINITIONS

Section 2.01 Terms Defined Above. As used in this Agreement, the terms defined above shall have the meanings respectively assigned to them.

Section 2.02 Terms Defined in the Code. The following terms shall have the meaning set forth in Article 9 of the Code: "Commodity Account" and "Deposit Account". The following terms shall have the meaning set forth in Article 8 of the Code: "Securities Accounts" and "Security". "Control" shall have the meaning set forth in Article 8 or, if applicable, in Section 9-104, 9-105, 9-106 or 9-107 of Article 9 of the Code.

Section 2.03 Definitions of Certain Terms. As used in this Agreement, the following terms shall have the following meanings, unless the context otherwise requires:

"Account" means any operating, administrative, cash management, collection activity, demand, time, savings, passbook or other deposit account, securities account, commodities account or investment account maintained with a bank or other financial institution.

"Account Control Agreement" means an agreement which grants Collateral Trustee Control over the applicable Account, in form and substance acceptable to Collateral Trustee.

"Act of Parity Lien Debtholders" has the meaning set forth in the Collateral Trust Agreement.

"Assumption Agreement" means an Assumption Agreement substantially in the form of Annex I hereto.

"Code" means Articles 1 through 9 of the Uniform Commercial Code as in effect from time to time in the State of New York.

"Collateral Trust Agreement" has the meaning set forth in the preliminary statements hereto.

"Event of Default" means any event specified in Section 6.01.

"Excluded Account" means (a) any Account so long as the balance in such Account, individually, does not exceed $100,000 at any time and the aggregate balance of all such Accounts does not at any time exceed $500,000 or (b) any Account which is solely used for purposes of funding payroll, payroll taxes or employee benefit payments or which solely contains cash of any Person, other than the Issuer or any of its Subsidiaries, and which cash is held in such Account solely on behalf of, and for the benefit of, such third party.

"Intercreditor Agreement" has the meaning set forth in the legend appearing on the cover page of this Agreement.

"Obligor" means any Person, other than any Grantor, liable (whether directly or indirectly, primarily or secondarily) for the payment or performance of any of the Secured Obligations whether as maker, co-maker, endorser, guarantor, accommodation party, general partner or otherwise.

"Proceeds" shall have the meaning set forth in Article 9 of the Code and, in any event shall include, without limitation, all income from the Collateral, collections thereon or payments with respect thereto.

"Secured Obligations" has the meaning set forth in Section 3.04 of this Agreement.

Section 2.04 Capitalized and Uncapitalized Terms. Unless otherwise defined herein, or the context hereof otherwise requires, each capitalized term defined in either the Indenture or the Code is used in this Agreement with the same meaning attributed thereto; provided, that, if the definition given to such term in the Indenture conflicts with the definition given to such term in the Code, the definition given to such term in the Indenture shall control to the extent legally allowable; and if any definition given to such term in Article 9 of the Code conflicts with the definition given to such term in any other article of the Code, the definition given to such term in Article 9 of the Code shall prevail. Unless otherwise indicated by the context herein, all uncapitalized terms that are defined in the Code shall have the respective meanings given to them in Articles 8 and 9 of the Code.

Section 2.05 Section References. Unless otherwise provided for herein, all references herein to Sections are to Sections of this Agreement.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES

In order to induce Collateral Trustee to accept this Agreement, each Grantor represents and warrants to Collateral Trustee (which representations and warranties will survive the creation and payment of the Secured Obligations) that:

Section 3.01 Ownership of Collateral; Encumbrances. Such Grantor is the record and beneficial owner of the Collateral, which is, except as otherwise permitted by the Indenture or any other applicable Parity Lien Document, free and clear of any Lien, and such Grantor has full right, power and authority to pledge, assign and grant a security interest in the Collateral to Collateral Trustee, for the benefit of the Parity Lien Secured Parties.

Section 3.02 No Required Consent. No authorization, consent, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body (other than the filing of financing statements in favor of Collateral Trustee) is required for the due execution, delivery and performance by such Grantor of this Agreement, the grant by such Grantor of the security interest granted by this Agreement or other than the execution of Account Control Agreements, the perfection of such security interest.

Section 3.03 Deposit Accounts, Commodity Accounts and Securities Accounts. All of such Grantor's Deposit Accounts, Commodity Accounts and Securities Accounts as of the Effective Date are listed on Exhibit A (as updated from time to time) and any Excluded Accounts as of the Effective Date are identified as such on Exhibit A (as updated from time to time).

Section 3.04 Second Priority Security Interest. This Agreement creates a valid second priority security interest in the Collateral (subject to the Intercreditor Agreement and Liens expressly permitted under clauses (1), (7), (11), (17), (26) and (32) of the definition of "Permitted Liens" in the Indenture), enforceable against each Grantor and all third parties (subject to the Intercreditor Agreement) and securing the payment of all Notes Obligations and all of the other Parity Lien Obligations of any Obligor (all such Notes Obligations and other Parity Lien Obligations, collectively, being the "Secured Obligations").

ARTICLE 4

COVENANTS AND AGREEMENTS

Each Grantor will at all times comply with the covenants and agreements contained in this Article 4, from the date hereof and for so long as any part of the Secured Obligations (other than any indemnity which is not yet due and payable) are outstanding.

Section 4.01 Authorization to File Financing Statements; Ratification. Such Grantor hereby authorizes Collateral Trustee to file, and if requested will, subject to the Intercreditor Agreement, deliver to Collateral Trustee, all financing statements and other documents and take such other actions as may from time to time be reasonably requested by Collateral Trustee in order to maintain a perfected second priority security interest in and, if applicable, Control of, the Collateral owned by such Grantor. Any financing statement filed by Collateral Trustee may be filed in any filing office in any UCC jurisdiction and may (i) indicate such Grantor's Collateral (1) as all assets of such Grantor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Code or such jurisdiction, or (2) by any other description which reasonably approximates the description contained in this Agreement, and (ii) contain any other information required by part 5 of Article 9 of the Code for the sufficiency or filing office acceptance of any financing statement or amendment, including whether such Grantor is an organization, the type of organization and any organization identification number issued to such Grantor. Such Grantor also agrees to furnish any such information to Collateral Trustee promptly upon reasonable request.

Section 4.02 Further Assurances. Such Grantor will, if so requested by Collateral Trustee (including a request made at the direction of an Act of Parity Lien Debtholders pursuant to the Collateral Trust Agreement), furnish to Collateral Trustee, as often as Collateral Trustee reasonably requests, statements and schedules further identifying and describing the Collateral owned by it and such other reports and information in connection with its Collateral as Collateral Trustee may reasonably request (including a request made at the direction of an Act of Parity Lien Debtholders pursuant to the Collateral Trust Agreement), all in such detail as Collateral Trustee may reasonably specify. Such Grantor also agrees to take any and all actions necessary to defend title to the Collateral against all persons and to defend the security interest of Collateral Trustee in its Collateral and the priority thereof against any Lien not expressly permitted hereunder.

Section 4.03 Account Control Agreements. For each Account (other than Excluded Accounts) that such Grantor at any time maintains, such Grantor will, subject to the Intercreditor Agreement, pursuant to an Account Control Agreement in form and substance satisfactory to Collateral Trustee, cause the institution that maintains such Account to agree to comply at any time with instructions from Collateral Trustee to such institution directing the disposition of funds from time to time credited to such Account, without further consent of such Grantor, or take such other action as Collateral Trustee may approve in order to perfect Collateral Trustee's security interest in such Account.

Section 4.04 Sale, Disposition or Encumbrance of Collateral. Such Grantor will not in any way encumber any of the Collateral (or permit or suffer any of the Collateral to be encumbered) or sell, pledge, assign, lend or otherwise dispose of or transfer any of the Collateral to or in favor of any Person (other than Collateral Trustee for the benefit of the Parity Lien Secured Parties), in each case, in a manner prohibited by the Indenture, this Agreement or any other applicable Parity Lien Document.

Section 4.05 Records and Information. Such Grantor shall keep accurate and complete records of the Collateral. Such Grantor will promptly provide written notice to Collateral Trustee of all information which in any way affects (a) the filing of any financing statement or other public notices or recordings pertaining to the perfection of a security interest in the Collateral or (b) the delivery and possession of items of Collateral for the purpose of perfecting a security interest in the Collateral.

Section 4.06 Certain Liabilities. Such Grantor hereby assumes all liability for the Collateral, the security interest created hereunder and any use, possession, maintenance, management, enforcement or collection of any or all of the Collateral.

Section 4.07 Further Assurances. Upon the request of Collateral Trustee (including a request made at the direction of an Act of Parity Lien Debtholders pursuant to the Collateral Trust Agreement), subject to the Intercreditor Agreement, such Grantor shall (at such Grantor's expense) execute (if applicable) and deliver all such assignments, certificates, instruments, securities, financing statements, notifications to financial intermediaries, clearing corporations, issuers of securities or other third parties or other documents and give further assurances and do all other acts and things as Collateral Trustee may reasonably request (including a request made at the direction of an Act of Parity Lien Debtholders pursuant to the Collateral Trust Agreement) to perfect Collateral Trustee's interest in the Collateral or to protect, enforce or otherwise effect Collateral Trustee's rights and remedies hereunder.

Section 4.08 Additional Grantors. Each Grantor agrees to cause each Subsidiary that is required to become a party to this Agreement to become a Grantor for all purposes of this Agreement upon execution and delivery by such Subsidiary of an Assumption Agreement in the form of Annex I hereto.

ARTICLE 5

RIGHTS, DUTIES AND POWERS OF COLLATERAL TRUSTEE

The following rights, duties and powers of Collateral Trustee are applicable irrespective of whether an Event of Default occurs and is continuing:

Section 5.01 Discharge Encumbrances. Collateral Trustee may, at its option, three (3) Business Days after receipt by any Grantor of prior written notice from Collateral Trustee of its intent to do so, discharge any Liens at any time levied or placed on the Collateral that are prohibited by the Indenture or any other applicable Parity Lien Document and that are not being contested in good faith by appropriate proceedings. Each Grantor agrees to reimburse Collateral

Trustee within five (5) days after demand for any payment so made, plus interest thereon from the date of Collateral Trustee's demand at the rate per annum equal to 2% plus the rate otherwise applicable to the Notes at such time.

Section 5.02 Resignation or Removal of Collateral Trustee. Collateral Trustee may resign (or be removed) in accordance with Section 6.1 of the Collateral Trust Agreement, and shall be discharged of its rights, powers, duties and remedies in accordance with the Collateral Trust Agreement. Any successor Collateral Trustee appointed pursuant to the Collateral Trust Agreement shall be entitled to all the rights, powers, duties and remedies of Collateral Trustee hereunder.

Section 5.03 Cumulative and Other Rights.

(a) The rights, powers and remedies of Collateral Trustee hereunder are in addition to all rights, powers and remedies given by law or in equity. The exercise by Collateral Trustee of any one or more of the rights, powers and remedies herein shall not be construed as a waiver of any other rights, powers and remedies, including, without limitation, any other rights of set-off.

(b) Collateral Trustee shall be entitled to rely upon written instructions given to it by an Act of Parity Lien Debtholders in requiring or requesting the performance of certain actions or the delivery of certain information to be delivered at the request of, or to the extent required by, Collateral Trustee hereunder. Collateral Trustee shall be entitled to rely upon any written notice, statement, certificate, order or other document believed by it to be genuine and correct and to have been signed or sent by the proper person, and, with respect to all matters pertaining to this Agreement and its duties hereunder, upon advice of counsel selected by it.

(c) In addition to the rights of Collateral Trustee hereunder, Collateral Trustee shall have the rights, protections and immunities given to it as Collateral Trustee under the Indenture, the Collateral Trust Agreement and any other applicable Parity Lien Document, and such are incorporated by reference herein, *mutatis mutandis*.

Section 5.04 Disclaimer of Certain Duties. The powers conferred upon Collateral Trustee by this Agreement are to protect its interest in the Collateral and shall not impose any duty upon Collateral Trustee to exercise any such powers. Each Grantor hereby agrees that Collateral Trustee shall not be liable for, nor shall the indebtedness evidenced by the Secured Obligations be diminished by, Collateral Trustee's delay or failure to collect upon, foreclose, sell, take possession of or otherwise obtain value for the Collateral. Collateral Trustee shall have no obligation to take any discretionary action hereunder except pursuant to an Act of Parity Lien Debtholders.

Section 5.05 Custody and Preservation of the Collateral. Collateral Trustee shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which comparable secured parties accord comparable collateral, it being understood and agreed, however, that Collateral Trustee shall not have responsibility for ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Collateral,

whether or not Collateral Trustee has or is deemed to have knowledge of such matters, or taking any necessary steps to preserve rights against Persons or entities with respect to any Collateral.

ARTICLE 6

EVENTS OF DEFAULT

Section 6.01 Events. An "Event of Default" (or any similar term, in each case, as defined in any Parity Lien Document) which has occurred and is continuing shall constitute an Event of Default under this Agreement.

Section 6.02 Remedies. Subject, in each case, to the Intercreditor Agreement and the Collateral Trust Agreement, upon the occurrence and during the continuance of any Event of Default, Collateral Trustee may take any or all of the following actions without notice or demand to any Grantor (except that Collateral Trustee will not take any action in the case of paragraphs (b) and (f) below until five (5) Business Days after receipt by any Grantor of written notice from Collateral Trustee of its intent to do so):

(a) Subject to applicable provisions contained in the applicable Parity Lien Document, declare all or part of the Secured Obligations immediately due and payable and enforce payment of the same by such Grantor or any Obligor.

(b) Sell, in one or more sales and in one or more parcels, or otherwise dispose of any or all of the Collateral in any commercially reasonable manner as Collateral Trustee may elect, in a public or private transaction, at any location as deemed reasonable by Collateral Trustee either for cash or credit or for future delivery at such price as Collateral Trustee may reasonably deem fair, and (unless prohibited by the Code, as adopted in any applicable jurisdiction) Collateral Trustee may be the purchaser of any or all Collateral so sold and may apply upon the purchase price therefor any Secured Obligations secured hereby. Any such sale or transfer by Collateral Trustee either to itself or to any other Person shall be absolutely free from any claim of right by such Grantor, including any equity or right of redemption, stay or appraisal which such Grantor has or may have under any rule of law, regulation or statute now existing or hereafter adopted. Upon any such sale or transfer, Collateral Trustee shall have the right to deliver, assign and transfer to the purchaser or transferee thereof the Collateral so sold or transferred. If Collateral Trustee reasonably deems it advisable to do so, it may restrict the bidders or purchasers of any such sale or transfer to Persons or entities who will represent and agree that they are purchasing the Collateral for their own account and not with the view to the distribution or resale of any of the Collateral. Collateral Trustee may, at its discretion, provide for a public sale, and any such public sale shall be held at such time or times within ordinary business hours and at such place or places as Collateral Trustee may fix in the notice of such sale. Collateral Trustee shall not be obligated to make any sale pursuant to any such notice. Collateral Trustee may, without notice or publication, adjourn any public or private sale by announcement at any time and place fixed for such sale, and such sale may be made at any time or place to which the same may be so adjourned. In the event any sale or transfer hereunder is not completed

or is defective in the opinion of Collateral Trustee, such sale or transfer shall not exhaust the rights of Collateral Trustee hereunder, and Collateral Trustee shall have the right to cause one or more subsequent sales or transfers to be made hereunder. If only part of the Collateral is sold or transferred such that the Secured Obligations remain outstanding (in whole or in part), Collateral Trustee's rights and remedies hereunder shall not be exhausted, waived or modified, and Collateral Trustee is specifically empowered to make one or more successive sales or transfers until all the Collateral shall be sold or transferred and all the Secured Obligations are paid. In the event that Collateral Trustee elects not to sell the Collateral, Collateral Trustee retains its rights to dispose of or utilize the Collateral or any part or parts thereof in any manner authorized or permitted by law or in equity, and to apply the proceeds of the same towards payment of the Secured Obligations.

(c) Apply proceeds of the disposition of the Collateral to the Secured Obligations in any manner elected by Collateral Trustee and permitted by the Code or otherwise permitted by law or in equity. Such application may include, without limitation, the reasonable attorneys' fees and legal expenses incurred by Collateral Trustee.

(d) Appoint any Person as agent to perform any act or acts necessary or incident to any sale or transfer by Collateral Trustee of the Collateral.

(e) Receive, change the address for delivery, open and dispose of mail addressed to such Grantor, and to execute, assign and endorse negotiable and other instruments for the payment of money, documents of title or other evidences of payment, shipment or storage for any form of Collateral on behalf of and in the name of such Grantor.

(f) Exercise all other rights and remedies permitted by law or in equity.

Section 6.03 Attorney-in-Fact. Subject to the Intercreditor Agreement, each Grantor hereby irrevocably appoints Collateral Trustee as such Grantor's attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor or otherwise, from time to time in Collateral Trustee's discretion upon the occurrence and during the continuance of an Event of Default but at such Grantor's cost and expense, three (3) Business Days after receipt by such Grantor of written notice from Collateral Trustee of its intent to do so, to, subject to the Intercreditor Agreement, take any action and to execute any assignment, certificate, financing statement, notification, document or instrument which Collateral Trustee may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, to take possession of or receive all or any cash located in any Account.

Section 6.04 Liability for Deficiency. If any sale or other disposition of Collateral by Collateral Trustee in compliance with the Parity Lien Documents and applicable law or any other action of Collateral Trustee hereunder in compliance with the Parity Lien Documents and applicable law results in reduction of the Secured Obligations, such action will not release any Grantor from its liability to Collateral Trustee for any unpaid Secured Obligations, including (to

the extent permitted by law) costs, charges and expenses incurred in the liquidation of Collateral, together with interest thereon until paid at the rate per annum equal to 2% plus the rate otherwise applicable to the Notes at such time, and the same shall be immediately due and payable to Collateral Trustee at Collateral Trustee's address set forth in the opening paragraph hereof.

Section 6.05 Reasonable Notice. If any applicable provision of any law requires Collateral Trustee to give reasonable notice of any sale or disposition or other action, each Grantor hereby agrees that ten (10) days' prior written notice shall constitute reasonable notice thereof. Such notice, in the case of public sale, shall state the time and place fixed for such sale and, in the case of private sale, the time after which such sale is to be made.

Section 6.06 Non-judicial Enforcement. To the extent permitted by law, Collateral Trustee may enforce its rights hereunder without prior judicial process or judicial hearing, and to the extent permitted by law each Grantor expressly waives any and all legal rights which might otherwise require Collateral Trustee to enforce its rights by judicial process.

ARTICLE 7

MISCELLANEOUS PROVISIONS

Section 7.01 Intercreditor Agreement. Notwithstanding any provision to the contrary in this Agreement, in the event of any conflict or inconsistency between the provisions of the Intercreditor Agreement and this Agreement, the provisions of the Intercreditor Agreement shall prevail. So long as the Priority Lien Agent is acting as bailee and as agent for perfection on behalf of Collateral Trustee pursuant to the terms of the Intercreditor Agreement, any obligation of any Grantor in this Agreement that requires (or any representation or warranty hereunder to the extent that it would have the effect of requiring) delivery of Collateral to, or the possession or control of Collateral with, Collateral Trustee shall be deemed complied with and satisfied (or, in the case of any representation or warranty hereunder, shall be deemed to be true) if such delivery of Collateral is made to, or such possession or control of Collateral is with, the Priority Lien Agent.

Section 7.02 Notices. All notices and other communications provided for hereunder shall be delivered in the manner provided in the Collateral Trust Agreement, in the case of the Issuer or Collateral Trustee, addressed to it at its address specified in Section 7.6 of the Collateral Trust Agreement and, in the case of each Grantor other than the Issuer, addressed to it at the address of the Issuer; or, as to any party, at such other address as shall be designated by such party in a written notice to the other parties. All such notices and other communications shall be effective when and as provided in the Collateral Trust Agreement.

Section 7.03 Amendments and Waivers. Collateral Trustee's acceptance of partial or delinquent payments or any forbearance, failure or delay by Collateral Trustee in exercising any right, power or remedy hereunder shall not be deemed a waiver of any obligation of any Grantor or any Obligor, or of any right, power or remedy of Collateral Trustee; and no partial exercise of any right, power or remedy shall preclude any other or further exercise thereof. Collateral Trustee may remedy any Event of Default hereunder or in connection with the Secured

Obligations without waiving the Event of Default so remedied. Each Grantor hereby agrees that if Collateral Trustee agrees to a waiver of any provision hereunder, or an exchange of or release of the Collateral, or the addition or release of any Obligor or any other Person, any such action shall not constitute a waiver of any of Collateral Trustee's other rights or of such Grantor's obligations hereunder. This Agreement may be amended only by an instrument in writing executed jointly by such Grantor and Collateral Trustee and may be supplemented only by documents delivered or to be delivered in accordance with the express terms hereof. Delivery of an executed counterpart of any amendment or waiver of any provision of this Agreement by facsimile, .pdf or any other electronic means of delivery shall be effective as delivery of an original executed counterpart thereof.

Section 7.04 Copy as Financing Statement. A photocopy or other reproduction of this Agreement may be delivered by any Grantor or Collateral Trustee to any financial intermediary or other third party for the purpose of transferring or perfecting any or all of the Collateral to Collateral Trustee or its designee or assignee.

Section 7.05 Possession of Collateral. Collateral Trustee shall be deemed to have possession of any Collateral in transit to it or set apart for it (or, in either case, any of its agents, affiliates or correspondents).

Section 7.06 Redelivery of Collateral. Subject to the Intercreditor Agreement, if any sale or transfer of Collateral by Collateral Trustee results in full satisfaction of the Secured Obligations, and after such sale or transfer and discharge there remains a surplus of proceeds, Collateral Trustee will, subject to the Intercreditor Agreement, deliver to each Grantor such excess proceeds in a commercially reasonable time; provided, however, that Collateral Trustee shall not have any liability for any interest, cost or expense in connection with any delay in delivering such proceeds to such Grantor.

Section 7.07 Governing Law; Jurisdiction; Consent to Service of Process; Waiver of Jury Trial. The terms and provisions of Sections 7.13 and 7.14 of the Collateral Trust Agreement are hereby incorporated herein by reference, *mutatis mutandis*, with the same force and effect as if fully set forth herein, and the parties hereto agree to such terms.

Section 7.08 Continuing Security Agreement.

(a) Except as otherwise provided by applicable law (including, without limitation, Section 9-620 of the Code), no action taken or omission to act by Collateral Trustee hereunder, including, without limitation, any action taken or inaction pursuant to Section 6.02, shall be deemed to constitute a retention of the Collateral in satisfaction of the Secured Obligations or otherwise to be in full satisfaction of the Secured Obligations, and the Secured Obligations shall remain in full force and effect, until Collateral Trustee shall have applied payments (including, without limitation, collections from Collateral) towards the Secured Obligations in the full amount then outstanding or until such subsequent time as is hereinafter provided in subsection (b) below.

(b) To the extent that any payments on the Secured Obligations or proceeds of the 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 Secured Obligations so satisfied shall be revived and continue as if such payment or proceeds had not been received by Collateral Trustee, and Collateral Trustee's security interests, rights, powers and remedies hereunder shall continue in full force and effect. In such event, this Agreement shall be automatically reinstated if it shall theretofore have been terminated pursuant to Section 7.09.

Section 7.09 Termination. The grant of a security interest hereunder and all of Collateral Trustee's rights, powers and remedies in connection therewith shall remain in full force and effect until released in accordance with the Collateral Trust Agreement Upon the complete payment of the Secured Obligations (other than any indemnity which is not yet due and payable), Collateral Trustee, at the written request and expense of such Grantor, will release, reassign and transfer the Collateral to the applicable Grantor and declare this Agreement to be of no further force or effect. Notwithstanding the foregoing, Section 4.06 and Section 7.08(b) shall survive the termination of this Agreement.

Section 7.10 Counterparts; Effectiveness. This Agreement may be executed in two or more counterparts. Each counterpart is deemed an original, but all such counterparts taken together constitute one and the same instrument. This Agreement becomes effective upon the execution hereof by the Issuer and delivery of the same to Collateral Trustee, and it is not necessary for Collateral Trustee to execute any acceptance hereof or otherwise signify or express its acceptance hereof. Delivery of an executed counterpart of a signature page to this Agreement by facsimile, .pdf or any other electronic means of delivery shall be effective as delivery of an original executed counterpart thereof.

Section 7.11 Limitation by Law. All rights, remedies and powers provided in this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Agreement are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they shall not render this Agreement invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

Section 7.12 Interest. It is the intention of the parties hereto to conform strictly to usury laws applicable to Collateral Trustee or any other Parity Lien Secured Party. Accordingly, if the transactions contemplated hereby would be usurious under applicable state or federal law, then, notwithstanding anything to the contrary in this Agreement or in any other Parity Lien Document, it is agreed as follows: the aggregate of all consideration which constitutes interest under law applicable to Collateral Trustee or any other Parity Lien Secured Party that is contracted for, taken, reserved, charged or received under the Secured Obligations, this Agreement or under any other Parity Lien Document or otherwise in connection with the Secured Obligations shall under no circumstances exceed the maximum amount allowed by such

applicable law, in the event that the maturity of any of the Secured Obligations is accelerated for any reason, or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to Collateral Trustee or any other Parity Lien Secured Party may never include more than such maximum amount, and excess interest, if any, provided for in this Agreement, any other Parity Lien Document or otherwise shall be cancelled automatically and, if theretofore paid, shall be credited by Collateral Trustee on the principal amount of the Secured Obligations (or, to the extent that the principal amount of the Secured Obligations shall have been or would thereby be paid in full, refunded by Collateral Trustee to the applicable Grantor). The right to accelerate the maturity of the Secured Obligations does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and neither Collateral Trustee nor any other Parity Lien Secured Party intend to collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid to Collateral Trustee or any other Parity Lien Secured Party for the use, forbearance or detention of sums included in the initial Secured Obligations shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of the Secured Obligations until payment in full so that the rate or amount of interest on account of the relevant Secured Obligations does not exceed the applicable usury ceiling, if any.

[*Signatures begin on next page*]

GRANTOR: SM ENERGY COMPANY, a Delaware corporation

By: /s/ David W. Copeland
Name: David W. Copeland
Title: Executive Vice President, General Counsel and Corporate Secretary

[Signature Page to Second Lien Security Agreement]

COLLATERAL TRUSTEE: UMB BANK, N.A., as Collateral Trustee

By: /s/ Shazia Flores
Name: Shazia Flores
Title: Vice President

[Signature Page to Second Lien Security Agreement]

EXHIBIT A

DEPOSIT ACCOUNTS

Name of Grantor	Name of Institution	Account Number	Description of Account
SM Energy Company	Wells Fargo Bank, N.A.	1010810756	ZBA
SM Energy Company	Wells Fargo Bank, N.A.	1010811249	Concentration Account
SM Energy Company	Wells Fargo Bank, N.A.	1010827127	ZBA
SM Energy Company	Wells Fargo Bank, N.A.	1018106923	Oklahoma Pooling Account
SM Energy Company	Wells Fargo Bank, N.A.	9600112965	Controlled disbursement
SM Energy Company	Wells Fargo Bank, N.A.	9600112984	Controlled disbursement

COMMODITY ACCOUNTS

Name of Grantor	Name of Institution	Account Number	Description of Account
None			

SECURITIES ACCOUNTS

Name of Grantor	Name of Institution	Account Number	Description of Account
SM Energy Company	Goldman Sachs Funds Group	1885061411	Investment Account

Excluded Accounts:

Wells Fargo Bank, N.A. Account # 1018071089

Wells Fargo Bank, N.A. Account # 4121482913

Wells Fargo Bank, N.A. Account # 4965294226

Capital One Account # 3820608134

JPMorgan Chase Bank Account # 475738349

ASSUMPTION AGREEMENT (this "Assumption Agreement"), dated as of _____, 20___ (the "Effective Date"), by _____, a _____ (the "Additional Grantor"), in favor of UMB Bank, N.A., as Collateral Trustee (in such capacity, the "Collateral Trustee") for the Parity Lien Secured Parties. All capitalized terms not defined herein shall have the meanings ascribed to them in the Indenture referred to below.

PRELIMINARY STATEMENTS

A. SM Energy Company, a Delaware corporation (the "Issuer"), and Collateral Trustee have entered into that Indenture, dated as of June 17, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "Indenture").

B. In connection with the Indenture, the Issuer is party to that certain Second Lien Security Agreement, dated as of June 17, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "Security Agreement"), in favor of Collateral Trustee for the benefit of the Parity Lien Secured Parties.

C. The Indenture requires the Additional Grantor to become a party to the Security Agreement.

D. The Additional Grantor has agreed to execute and deliver this Assumption Agreement in order to become a party to the Security Agreement.

ACCORDINGLY, IT IS AGREED:

1. Security Agreement. By executing and delivering this Assumption Agreement, the Additional Grantor, as provided in Section 4.08 of the Security Agreement, hereby becomes a party to the Security Agreement as a "Grantor" thereunder with the same force and effect as if originally named therein as a Grantor and, without limiting the generality of the foregoing, hereby expressly assumes all obligations and liabilities of a Grantor thereunder and grants a security interest to Collateral Trustee, as provided therein, in all of its right, title and interest in and to the Collateral (as defined in the Security Agreement) to secure the prompt and complete payment and performance of the Secured Obligations. The information set forth in Annex 1-A hereto is hereby added to the information set forth in the appropriate Exhibits to the Security Agreement. The Additional Grantor hereby represents and warrants that each of the representations and warranties contained in Article III of the Security Agreement is, as to itself, true and correct on and as the date hereof (after giving effect to this Assumption Agreement) as if made on and as of such date.

2. GOVERNING LAW. THIS ASSUMPTION AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS ASSUMPTION AGREEMENT

SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, the undersigned has caused this Assumption Agreement to be duly executed and delivered as of the date first above written.

[ADDITIONAL GRANTOR]

_____,

a _____
By:_____

Name:_____
Title:_____

EXHIBIT 10.4

Execution Version

COLLATERAL TRUST AGREEMENT

dated as of June 17, 2020

among

SM ENERGY COMPANY,
as the Company,

the Guarantors from time to time party hereto,

UMB Bank, N.A.,
as Trustee under the Indenture,

the other Parity Lien Representatives from time to time party hereto

and

UMB Bank, N.A.,
as Collateral Trustee

Reference is made to the Intercreditor Agreement, dated as of June 17, 2020, between WELLS FARGO BANK, NATIONAL ASSOCIATION, as Priority Lien Agent (as defined therein), and UMB Bank, N.A., as Second Lien Collateral Trustee (as defined therein) (as amended, supplemented, amended and restated or otherwise modified and in effect from time to time, the "Intercreditor Agreement"). Each holder of any Parity Lien Debt and Additional Parity Lien Debt, by its acceptance of such Parity Lien Debt or Additional Parity Lien Debt (i) consents to the subordination of Liens provided for in the Intercreditor Agreement, (ii) agrees that it will be bound by, and will take no actions contrary to, the provisions of the Intercreditor Agreement and (iii) authorizes and instructs the Collateral Trustee on behalf of each Parity Lien Secured Party to enter into the Intercreditor Agreement as Second Lien Collateral Trustee on behalf of such Parity Lien Secured Party. The foregoing provisions are intended as an inducement to the lenders under the Priority Credit Agreement to extend credit to SM Energy and such lenders are intended third party beneficiaries of such provisions and the provisions of the Intercreditor Agreement.

Notwithstanding any other provision contained herein, this Agreement and the rights, remedies, duties and obligations provided for herein are subject in all respects to the provisions of the Intercreditor Agreement and, to the extent provided therein, the applicable Security Documents (as defined in the Intercreditor Agreement). In the event of any conflict or inconsistency between the provisions of this Agreement and the Intercreditor Agreement, the provisions of the Intercreditor Agreement shall control.

TABLE OF CONTENTS

This Collateral Trust Agreement (as amended, supplemented, amended and restated or otherwise modified form time to time in accordance with **Section 7.1** hereof, this "**Agreement**") is dated as of June 17, 2020 and is by and among SM Energy Company, a Delaware corporation (the "**Company**"), the Guarantors from time to time party hereto, UMB Bank, N.A., as Trustee (as defined below), and UMB Bank, N.A., as Collateral Trustee (in such capacity and together with its successors in such capacity, the "**Collateral Trustee**").

RECITALS

The Company intends to issue 10.000% Senior Secured Notes due 2025 (the "**Initial Notes**"), in an aggregate principal amount of up to $446,675,000 pursuant to an Indenture dated as of the date hereof (as amended, supplemented, amended and restated or otherwise modified and in effect from time to time, the "**Indenture**"), among the Company, the guarantors party thereto from time to time and UMB Bank, N.A., as trustee (in such capacity and together with its successors in such capacity, the "**Trustee**").

The Company and the Guarantors intend to secure their Obligations under the Indenture, any future Parity Lien Debt and any other Parity Lien Obligations, with Liens on all present and future Collateral to the extent that such Liens have been provided for in the applicable Parity Lien Security Documents.

This Agreement sets forth the terms on which each Parity Lien Secured Party (other than the Collateral Trustee) has appointed the Collateral Trustee to act as the collateral trustee for the present and future holders of the Parity Lien Obligations to receive, hold, maintain, administer and distribute the Collateral at any time delivered to the Collateral Trustee or the subject of the Parity Lien Security Documents, and to enforce the Parity Lien Security Documents and all interests, rights, powers and remedies of the Collateral Trustee with respect thereto or thereunder and the proceeds thereof.

Capitalized terms used in this Agreement have the meanings assigned to them above or in **ARTICLE 1** below.

AGREEMENT

In consideration of the premises and the mutual agreements herein set forth, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement hereby agree as follows:

ARTICLE 1
DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Defined Terms. The following terms will have the following meanings:

"**Act of Parity Lien Debtholders**" means, as to any matter at any time, a direction in writing delivered to the Collateral Trustee by or with the written consent of the holders of Parity Lien Debt representing the Required Parity Lien Debtholders.

"**Additional Notes**" has the meaning given to it in the Indenture as in effect on the date hereof.

"**Additional Parity Lien Debt**" has the meaning set forth in **Section 3.8(b)**.

"**Additional Secured Debt Designation**" means a notice in substantially the form of **Exhibit A**.

"**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control," as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise; *provided* that beneficial ownership of 10% or more of the Voting Stock of a Person will be deemed to be control. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" have correlative meanings.

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

"**Board of Directors**" means: (1) with respect to a corporation, the board of directors of the corporation; (2) with respect to a partnership, the Board of Directors of the general partner of the partnership; and (3) with respect to any other Person, the board or committee of such Person serving a similar function.

"**Business Day**" means each day that is not a Saturday, Sunday or other day on which banking institutions in Houston, Texas, Charlotte, North Carolina or Denver, Colorado are authorized or required by law to close.

"**Capital Stock**" of any Person means any and all shares, units, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including any preferred stock, but excluding any debt securities convertible into, or exchangeable for, such equity.

"**Collateral**" means all properties and assets, whether real, personal or mixed, wherever located and whether now owned or hereafter acquired by the Company or any Guarantor, as to which a Lien is granted or purported to be granted to the Collateral Trustee under the Parity Lien Security Documents to secure the Parity Lien Obligations, and from and after the time the Collateral Trustee is required to release its Liens pursuant to **Section 3.2** upon any properties or assets, shall exclude such properties or assets; *provided* that if such Liens are required to be released as a result of the sale, transfer or other disposition of any properties or assets of the Company or any Guarantor, such assets or properties will cease to be excluded from the Collateral if the Company or any Guarantor thereafter acquires or reacquires such properties or assets.

"**Collateral Trustee**" has the meaning set forth in the preamble.

"**Collateral Trust Joinder**" means (i) with respect to the provisions of this Agreement relating to any Additional Parity Lien Debt, an agreement substantially in the form of **Exhibit B**, and (ii) with respect to the provisions of this Agreement relating to the addition of additional Grantors, an agreement substantially in the form of **Exhibit C**.

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

"**Credit Agreement**" means the "Priority Credit Agreement" as defined in the Intercreditor Agreement.

"**Discharge of Parity Lien Obligations**" means the occurrence of all of the following:

(a) payment in full in cash of the principal of and interest and premium (if any) on all Parity Lien Debt;

(b) payment in full in cash of all other Parity Lien Obligations that are outstanding and unpaid at the time the Parity Lien Debt is paid in full in cash (other than any obligations for taxes, costs, indemnifications, reimbursements, damages and other liabilities in respect of which no claim or demand for payment has been made at or prior to such time);

provided that, if at any time after the Discharge of Parity Lien Obligations has occurred, the Company or any Guarantor enters into any Parity Lien Document evidencing a Parity Lien Obligation which incurrence is not prohibited by the applicable Secured Debt Documents, then such Discharge of Parity Lien Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement with respect to such new Parity Lien Obligations (other than with respect to any actions taken as a result of the occurrence of such first Discharge of Parity Lien Obligations), and, from and after the date on which the Company designates such Indebtedness as Parity Lien Debt in accordance with this Agreement, the obligations under such Parity Lien Document shall automatically and without any further action be treated as Parity Lien Obligations for all purposes of this Agreement and the Intercreditor Agreement, including for purposes of Lien priorities and rights in respect of Collateral set forth in the Intercreditor Agreement, and any Junior Lien Obligations shall be deemed to have been at all times Junior Lien Obligations and at no time Parity Lien Obligations.

For the avoidance of doubt, a replacement of Parity Lien Obligations with other Parity Lien Obligations to the extent contemplated and permitted by this Agreement and the Intercreditor Agreement shall not be deemed to cause a Discharge of Parity Lien Obligations.

"**Enforcement Action**" means (a) the taking of any action to enforce any Lien in respect of the Collateral, including the institution of any foreclosure proceedings, the noticing of any public or private sale or other disposition under the Bankruptcy Code (as defined in the Intercreditor Agreement) or any attempt to vacate or obtain relief from a stay or other injunction restricting any other action described in this definition, (b) the exercise of any right or remedy provided to a secured creditor on account of a Lien under the Priority Lien Documents, Parity Lien Documents or Junior Lien Documents, as applicable (including any delivery of any notice to seek to obtain payment directly from any account debtor of the Company or any Guarantor or the taking of any action or the exercise of any right or remedy in respect of the setoff or recoupment against, collection or foreclosure on or marshalling of the Collateral or proceeds of Collateral), under applicable Legal Requirement, at equity, in an Insolvency or Liquidation Proceeding or otherwise, including the acceptance of Collateral in full or partial satisfaction of a Lien, (c) the sale, assignment, transfer, lease, license, or other disposition as a secured creditor on account of a Lien of all or any portion of the Collateral, by private or public sale (judicial or non-judicial) or any other means, (d) the solicitation of bids from third parties to conduct the liquidation of all or a portion of Collateral as a secured creditor on account of a Lien, (e) the exercise of any other enforcement right relating to the Collateral (including the exercise of any voting rights relating to any Capital Stock comprising a portion of the Collateral) whether under the Priority Lien Documents, Parity Lien Documents, or Junior Lien Documents, as applicable, under applicable Legal Requirement of any jurisdiction, in equity, in an Insolvency or Liquidation Proceeding, or otherwise, or (f) the appointment of a receiver, manager or interim receiver of all or any portion of the Collateral or the commencement of, or the joinder with any creditor in commencing, any Insolvency or Liquidation Proceeding against the Company or any Guarantor or any assets of the Company or any Guarantor.

"**Grantor**" means each of and "**Grantors**" means, collectively, the Company and the Guarantors and any other Person (if any) that at any time provides collateral security for any Parity Lien Obligations.

"**Guarantee**" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person and any obligation, direct or indirect, contingent or otherwise, of such Person:

(1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise); or

(2) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part);

provided, however, that the term "Guarantee" will not include endorsements for collection or deposit in the ordinary course of business or any obligation to the extent it is payable only in Capital Stock of the Guarantor that is not Disqualified Stock (as defined in the Indenture). The term "Guarantee" used as a verb has a corresponding meaning.

"**Guarantor**" means each Subsidiary of the Company that is a guarantor of the Parity Lien Obligations, including any Person that is required after the date hereof to guarantee the Parity Lien Obligations pursuant to the Parity Lien Documents, in each case until a successor replaces such Person pursuant to the applicable provisions of the Parity Lien Documents and, thereafter, means such successor.

"**Indebtedness**" has the meaning assigned to such term in the Indenture or to such term or other similar term in any applicable Parity Lien Document.

"**Indemnified Liabilities**" means any and all liabilities (including all environmental liabilities), obligations, losses, damages, penalties, actions, judgments, suits, costs, taxes, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, performance, administration or enforcement of this Agreement or any of the other Parity Lien Security Documents, including any of the foregoing relating to the use of proceeds of any Parity Lien Debt or the violation of, noncompliance with or liability under, any law (including environmental laws) applicable to or enforceable against the Company or any Guarantor or any of the Collateral, and all reasonable and documented out-of-pocket costs and expenses (including reasonable and documented fees and expenses of a single legal counsel to the applicable Indemnitees, and one additional local legal counsel to the applicable Indemnitees in each applicable jurisdiction) incurred by any Indemnitee in connection with any claim, action, investigation or proceeding in any respect relating to any of the foregoing, whether or not suit is brought.

"**Indemnitee**" has the meaning set forth in **Section 7.9(a)**.

"**Indenture**" has the meaning set forth in the recitals.

"**Initial Notes**" has the meaning set forth in the recitals.

"**Insolvency or Liquidation Proceeding**" has the meaning assigned to such term in the Intercreditor Agreement.

"**Intercreditor Agreement**" means that certain Intercreditor Agreement, dated as of the date hereof, among the Company, the Guarantors, the Collateral Trustee, the Priority Lien Collateral Agent, and the other parties from time to time party thereto, as the same may be amended, restated, supplemented or otherwise modified or replaced from time to time.

"**Junior Lien Debt**" has the meaning assigned to the term "Third Lien Debt" in the Intercreditor Agreement.

"**Junior Lien Documents**" has the meaning assigned to the term "Third Lien Documents" in the Intercreditor Agreement.

"**Junior Lien Obligations**" has the meaning assigned to the term "Third Lien Obligations" in the Intercreditor Agreement.

"**Lien**" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest, hypothecation, or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable Legal Requirement, including any conditional sale or other title retention agreement, any lease in the nature thereof, any agreement to give a security interest therein and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction.

"**Notes**" means, collectively, the Initial Notes and the Additional Notes for which the requirements set forth in **Section 3.8** of this Agreement have been satisfied.

"**Note Documents**" means the Indenture, the Notes, the Intercreditor Agreement and the Notes Security Documents.

"**Notes Security Agreement**" means the Second Lien Pledge and Security Agreement, dated as of the date hereof, among the Company, the Guarantors party thereto from time to time and the Collateral Trustee, for the ratable benefit of the Secured Parties (as defined therein), as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"**Notes Security Documents**" means the Indenture (insofar as the same grants a Lien on the Collateral), this Agreement, each Collateral Trust Joinder, the Notes Security Agreement and all other security agreements, pledge agreements, collateral assignments, mortgages, deeds of trust, collateral agency agreements, control agreements or other grants or transfers for security executed and delivered by the Company or any Guarantor creating (or purporting to create) a Parity Lien upon Collateral in favor of the Collateral Trustee, in each case, as amended, modified, renewed, restated or replaced, in whole or in part, from time to time, in accordance with its terms and **Section 7.1**.

"**Obligations**" means any principal (including reimbursement obligations and obligations to provide cash collateral with respect to letters of credit whether or not drawn), interest, premium (if any), fees, penalties, damages, indemnifications, reimbursements, expenses and other liabilities payable under the documentation governing any Indebtedness (including, to the extent legally permitted, all interest, premiums, fees, penalties, damages, indemnifications, reimbursements, expenses and other liabilities accrued thereon after the commencement of any Insolvency or Liquidation Proceeding at the rate, including any applicable post-default rate even if such applicable amount is not enforceable, allowable or allowed as a claim in such proceeding).

"**Officer**" means, with respect to any Person, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary, any Senior Vice President, any Vice President or any Assistant Vice President of such Person.

"**Officer's Certificate**" means a certificate with respect to compliance with a condition or covenant provided for in this Agreement, signed on behalf of the Company by any Officer of the Company that includes:

(a) a statement that the Person making such certificate has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate are based;

(c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been satisfied; and

(d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been satisfied.

"**Opinion of Counsel**" means a written opinion delivered solely to the Collateral Trustee, from a legal counsel who is acceptable to the Collateral Trustee. The counsel may be an employee of or counsel to the Company or the Collateral Trustee or any Person who is required to deliver such opinion pursuant this Agreement.

"**Parity Lien**" means a Lien granted by the Company or any Grantor in favor of the Collateral Trustee pursuant to a Parity Lien Security Document, at any time, upon any property of the Company or such Grantor to secure Parity Lien Obligations.

"**Parity Lien Debt**" means:

(1) the Initial Notes and Guarantees thereof; and

(2) any other Indebtedness (other than intercompany Indebtedness owing to the Company or any Guarantor) of the Company or any Guarantor (including Additional Notes and Guarantees thereof) that is secured equally and ratably with the Notes or any other Parity Lien Debt by a Parity Lien that was permitted to be incurred and so secured under each applicable Secured Debt Document; *provided* that in the case of any Indebtedness referred to in **clause (2)** of this definition, that:

(a) on or before the date on which such Indebtedness is incurred by the Company or any Guarantor, such Indebtedness is designated by the Company, in an Additional Secured Debt Designation executed and delivered in accordance with **Section 3.8(b)**, as "Parity Lien Debt" for the purposes of the Indenture and this Agreement; *provided further* that no such Indebtedness may be designated as both Parity Lien Debt and Priority Lien Debt or Junior Lien Debt (or any combination of the three);

(b) other than in the case of any Additional Notes, the Parity Lien Representative for such Indebtedness executes and delivers a Collateral Trust Joinder in accordance with **Section 3.8(b)**; and

(c) all other requirements set forth in **Section 3.8** have been complied with;

provided, further that in the case of any Additional Notes, on or before the date on which Indebtedness in respect of Additional Notes is incurred, the Company will deliver to the Collateral Trustee an Officer's Certificate stating that such Indebtedness is permitted by each applicable Parity Lien Document to be incurred and secured with a Parity Lien equally and ratably with all previously existing and future Parity Lien Debt.

"**Parity Lien Debt Default**" means any "Event of Default" as defined in the Indenture, or any similar event or condition set forth in any other Parity Lien Document that causes, or permits holders of the applicable Series of Parity Lien Debt outstanding thereunder (with or without the giving of notice or lapse of time, or both, and whether or not notice has been given or time has lapsed) to cause, the Parity Lien Debt outstanding thereunder to become immediately due and payable.

"**Parity Lien Documents**" means, collectively, the Note Documents and any additional indenture, credit agreement or other agreement governing each other Series of Parity Lien Debt and the Parity Lien Security Documents.

"**Parity Lien Obligations**" means Parity Lien Debt and all other Obligations in respect thereof.

"**Parity Lien Representative**" means:

(1) in the case of the Notes, the Trustee; or

(2) in the case of any other Series of Parity Lien Debt, the trustee, agent or representative of the holders of such Series of Parity Lien Debt who is appointed to act for the holders of such Series of Parity Lien Debt (for purposes related to the administration of the Parity Lien Security Documents) pursuant to the indenture, credit agreement or other agreement governing such Series of Parity Lien Debt, together with its successors in such capacity, and that has executed a Collateral Trust Joinder.

"**Parity Lien Secured Parties**" means the holders of Parity Lien Obligations, the Collateral Trustee and each Parity Lien Representative.

"**Parity Lien Security Documents**" means the Notes Security Documents, and all other security agreements, pledge agreements, collateral assignments, mortgages, deeds of trust, collateral agency agreements, control agreements or other grants or transfers for security, now existing or entered into after the date hereof, executed and delivered by the Company or any Guarantor creating (or purporting to create) a Lien upon Collateral in favor of the Collateral Trustee, for the benefit of the Parity Lien Secured Parties, in each case, as amended, modified, renewed, restated or replaced, in whole or in part, from time to time, in accordance with its terms and **Section 7.1**.

"**Permitted Prior Liens**" means Liens in clauses (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (15), (18), (19), (20), (21), (23), (24), (26), (27), (28), (30) and (31) in the definition of "Permitted Liens" in the Indenture.

"**Person**" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company, government or any agency or political subdivision thereof or any other entity.

"**Priority Lien Collateral Agent**" means Wells Fargo Bank, National Association, as administrative agent under the Credit Agreement and any successor thereof in such capacity under the Credit Agreement, or if the Credit Agreement ceases to exist, the collateral agent or other representative of lenders or holders of Priority Lien Obligations designated pursuant to the terms of the Priority Lien Documents pursuant to which such Priority Lien Obligations were issued and the Intercreditor Agreement.

"**Priority Lien Debt**" has the meaning assigned to such term in the Intercreditor Agreement.

"**Priority Lien Documents**" has the meaning assigned to such term in the Intercreditor Agreement.

"**Priority Lien Obligations**" has the meaning assigned to such term in the Intercreditor Agreement.

"**Reaffirmation Agreement**" means an agreement reaffirming the security interests granted to the Collateral Trustee in substantially the form attached as Annex 1 to **Exhibit A** of this Agreement.

"**Required Parity Lien Debtholders**" means, at any time, the holders of a majority in aggregate principal amount of all Parity Lien Debt then outstanding, calculated in accordance with the provisions of **Section 7.2**.

"**Secured Debt Document**" means the Priority Lien Documents, the Parity Lien Documents and the Junior Lien Documents.

"**Series of Parity Lien Debt**" means, severally, the Notes and each other issue or series of Parity Lien Debt for which a single transfer register is maintained.

"**Subsidiary**" means, with respect to any specified Person: (1) any corporation, association, limited liability company or other business entity (other than a partnership) of which more than 50% of the total voting power of Voting Stock is at the time owned or controlled, directly or through another subsidiary, by that Person or one or more of the other subsidiaries of that Person (or a combination thereof); and (2) any partnership (a) the sole general partner or the managing general partner of which is such Person or a subsidiary of such Person or (b) the only general partners of which are that Person or one or more subsidiaries of that Person (or any combination thereof), or (c) as to which such Person and its subsidiaries are entitled to receive more than 50% of the assets of such partnership upon its dissolution. Unless otherwise specified herein, each reference to a Subsidiary (other than in this definition) will refer to a Subsidiary of the Company.

"**Trust Estate**" has the meaning set forth in **Section 2.1**.

"**Trustee**" has the meaning set forth in the recitals.

"**UCC**" means the Uniform Commercial Code as in effect from time to time in the State of New York or any other applicable jurisdiction.

"**Voting Stock**" of any Person as of any date means the Capital Stock of such Person that is at the time entitled (without regard to the occurrence of any contingency) to vote in the election of the Board of Directors of such Person.

Section 1.2 Rules of Interpretation.

(a) All capitalized terms used in this Agreement and not otherwise defined herein have the meanings assigned to them in the Indenture.

(b) Unless otherwise indicated, any reference to any agreement or instrument will be deemed to include a reference to that agreement or instrument as assigned, amended, supplemented, amended and restated, or otherwise modified and in effect from time to time or replaced in accordance with the terms of this Agreement.

(c) The use in this Agreement or any of the other Parity Lien Security Documents, the word "include" or "including," when following any general statement, term or matter, will not be construed to

limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but will be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. The word "will" shall be construed to have the same meaning and effect as the word "shall."

(d) References to "Sections," "clauses," "recitals" and the "preamble" will be to Sections, clauses, recitals and the preamble, respectively, of this Agreement unless otherwise specifically provided. References to "Articles" will be to Articles of this Agreement unless otherwise specifically provided. References to "Exhibits" and "Schedules" will be to Exhibits and Schedules, respectively, to this Agreement unless otherwise specifically provided.

(e) Notwithstanding anything to the contrary in this Agreement, any references contained herein to any section, clause, paragraph, definition or other provision of the Indenture (including any definition contained therein) shall be deemed to be a reference to such section, clause, paragraph, definition or other provision as in effect on the date of this Agreement; *provided* that any reference to any such section, clause, paragraph or other provision shall refer to such section, clause, paragraph or other provision of the Indenture (including any definition contained therein) as amended or modified from time to time if such amendment or modification has been made in accordance with the Indenture. Unless otherwise set forth herein, references to principal amount shall include, without duplication, any reimbursement obligations with respect to a letter of credit and the face amount of any outstanding letter of credit (whether or not such amount is, at the time of determination, drawn or available to be drawn).

This Agreement and the other Parity Lien Security Documents will be construed without regard to the identity of the party who drafted it and as though the parties participated equally in drafting it. Consequently, each of the parties acknowledges and agrees that any rule of construction that a document is to be construed against the drafting party will not be applicable either to this Agreement or the other Parity Lien Security Documents.

ARTICLE 2
THE TRUST ESTATE

Section 2.1 Declaration of Trust Estate.

(a) To secure the payment of the Parity Lien Obligations and in consideration of the premises and the mutual agreements set forth in this Agreement, each Grantor hereby confirms the grant of Liens in favor of the Collateral Trustee, and the Collateral Trustee hereby accepts and agrees to hold, in trust under this Agreement for the benefit of all current and future Parity Lien Secured Parties, such Liens on all of such Grantor's right, title and interest in, to and under all Collateral and all Liens now or hereafter granted to the Collateral Trustee under any Parity Lien Security Document for the benefit of the Parity Lien Secured Parties, together with all of the Collateral Trustee's right, title and interest in, to and under the Parity Lien Security Documents, and all interests, rights, powers and remedies of the Collateral Trustee thereunder or in respect thereof and all cash and non-cash proceeds thereof (collectively, the "**Trust Estate**").

(b) The Collateral Trustee and its successors and assigns under this Agreement will hold the Trust Estate in trust for the benefit solely and exclusively of all current and future Parity Lien Secured Parties as security for the payment of all present and future Parity Lien Obligations.

(c) Notwithstanding the foregoing, if at any time:

(1) all Liens securing the Parity Lien Obligations have been released as provided in **Section 4.1**;

(2) the Collateral Trustee holds no other property in trust as part of the Trust Estate;

(3) no monetary obligation (other than indemnification and other contingent obligations not then due and payable) is outstanding and payable under this Agreement to the Collateral Trustee or any of its co-trustees or agents (whether in an individual or representative capacity); and

(4) the Company delivers to the Collateral Trustee an Officer's Certificate stating that all Parity Liens of the Collateral Trustee have been released in compliance with all applicable provisions of the Parity Lien Documents and that the Grantors are not required by any Parity Lien Document to grant any Parity Lien upon any property, then the Trust Estate arising hereunder will terminate (subject to any reinstatement pursuant to **Section 7.17** hereof), except that all provisions set forth in **Sections 7.8** and **7.9** that are enforceable by the Collateral Trustee or any of its co-trustees or agents (whether in an individual or representative capacity) will remain enforceable in accordance with their terms.

(d) The parties further declare and covenant that the Trust Estate will be held and distributed by the Collateral Trustee subject to the further agreements herein and in the Intercreditor Agreement (if any) and the other Parity Lien Documents.

Section 2.2 Collateral Shared Equally and Ratably. The parties to this Agreement agree that, except as expressly set forth in **Section 3.4**, the payment and satisfaction in full of all of the Parity Lien Obligations will be secured equally and ratably by the Parity Lien established in favor of the Collateral Trustee for the benefit of the Parity Lien Secured Parties, notwithstanding the time of incurrence of any Parity Lien Obligations or time or method of creation or perfection of any Parity Liens securing such Parity Lien Obligations.

Section 2.3 Similar Collateral and Agreements. The parties to this Agreement agree that it is their intention that the Parity Liens be identical. In furtherance of the foregoing, the parties hereto agree that the Parity Lien Security Documents (other than the Notes Security Documents) shall be in all material respects the same forms of documents as the respective Notes Security Documents creating Liens on the Collateral.

ARTICLE 3
OBLIGATIONS AND POWERS OF COLLATERAL TRUSTEE

Section 3.1 Appointment and Undertaking of the Collateral Trustee.

(a) Each Parity Lien Secured Party (other than the Collateral Trustee) acting through its respective Parity Lien Representative hereby appoints the Collateral Trustee to serve as collateral trustee hereunder on the terms and conditions set forth herein. Subject to, and in accordance with, this Agreement, the Collateral Trustee will, as collateral trustee, for the benefit solely and exclusively of the present and future Parity Lien Secured Parties:

(1) accept, enter into, hold, maintain, administer and enforce all Parity Lien Security Documents, including all Collateral subject thereto, and all Liens created thereunder, perform its obligations hereunder and under the Parity Lien Security Documents and protect, exercise and enforce the interests, rights, powers and remedies granted or available to it under, pursuant to or in connection with the Parity Lien Security Documents;

(2) pursuant to a request made in an Act of Parity Lien Debtholders, at the expense of the Company take all lawful and commercially reasonable actions permitted under the Parity Lien Security Documents that it is directed to take in an Act of Parity Lien Debtholders to protect or preserve its interest in the Collateral subject thereto and such interests, rights, powers and remedies;

(3) deliver and receive notices pursuant to this Agreement and the Parity Lien Security Documents;

(4) acting pursuant to an Act of Parity Lien Debtholders, sell, assign, collect, assemble, foreclose on, institute legal proceedings with respect to, or otherwise exercise or enforce the rights and remedies of a secured party (including a mortgagee, trust deed beneficiary and insurance beneficiary or loss payee) with respect to the Collateral under the Parity Lien Security Documents and its other interests, rights, powers and remedies;

(5) remit as provided in **Section 3.4** all cash proceeds received by the Collateral Trustee from the collection, foreclosure or enforcement of its interest in the Collateral under the Parity Lien Security Documents or any of its other interests, rights, powers or remedies;

(6) execute and deliver amendments to the Parity Lien Security Documents as from time to time authorized pursuant to **Section 7.1** accompanied by an Officer's Certificate and an Opinion of Counsel to the effect that the amendment was permitted under **Section 7.1**;

(7) release or subordinate any Lien granted to it by any Parity Lien Security Document upon any Collateral if and as required by **Section 3.2**; and

(8) enter into and perform its obligations and protect, exercise and enforce its interests, rights, powers and remedies under the Intercreditor Agreement.

(b) Each party to this Agreement (in the case of each Parity Lien Representative, on behalf of itself and the Parity Lien Secured Parties represented by it) acknowledges and consents to the undertaking of the Collateral Trustee set forth in **Section 3.1(a)** and agrees to each of the other provisions of this Agreement applicable to the Collateral Trustee.

(c) Notwithstanding anything to the contrary contained in this Agreement, the Collateral Trustee shall have no obligation to commence and will not commence any exercise of remedies or any foreclosure actions or otherwise take any action or proceeding against any of the Collateral (other than actions as necessary to prove, protect or preserve the Liens securing the Parity Lien Obligations to the extent permitted pursuant to the Intercreditor Agreement) unless and until it shall have been directed by written notice of an Act of Parity Lien Debtholders and received indemnity satisfactory to it and then only in accordance with the provisions of this Agreement and the Intercreditor Agreement.

(d) Notwithstanding anything to the contrary contained in this Agreement, neither the Company nor any of its Affiliates may serve as Collateral Trustee.

Section 3.2 Release or Subordination of Liens. The Collateral Trustee will not release or subordinate any Parity Lien of the Collateral Trustee or consent to the release or subordination of any Parity Lien of the Collateral Trustee, except:

(a) to release or subordinate Liens on Collateral to the extent directed by an Act of Parity Lien Debtholders;

(b) as required by **Article 4**;

(c) as ordered pursuant to applicable Legal Requirement under a final and nonappealable order or judgment of a court of competent jurisdiction; or

(d) for the subordination of the Trust Estate and the Parity Liens to the extent required by the Intercreditor Agreement.

Section 3.3 Enforcement of Liens. If the Collateral Trustee at any time receives written notice from a Parity Lien Representative stating that any event has occurred that constitutes a default under any Parity Lien Document for which such Parity Lien Representative serves as Parity Lien Representative, entitling the Collateral Trustee to foreclose upon, collect or otherwise enforce its Liens under the Parity Lien Security Documents, the Collateral Trustee will promptly deliver written notice thereof to each other Parity Lien Representative. Thereafter, the Collateral Trustee may await direction by an Act of Parity Lien Debtholders and, subject to the terms of the Intercreditor Agreement, will act, or decline to act, as directed by an Act of Parity Lien Debtholders, in the exercise and enforcement of the Collateral Trustee's interests, rights, powers and remedies in respect of the Collateral or under the Parity Lien Security Documents or applicable Legal Requirement and, following the initiation of such exercise of remedies, the Collateral Trustee will, subject to the terms of the Intercreditor Agreement, act, or decline to act, with respect to the manner of such exercise of remedies as directed by an Act of Parity Lien Debtholders. Unless it has been directed to the contrary by an Act of Parity Lien Debtholders, the Collateral Trustee in any event may (but will not be obligated to) take or refrain from taking such action with respect to any default under any Parity Lien Document as it may deem advisable and in the best interest of the holders of Parity Lien Obligations, subject to the terms of the Intercreditor Agreement.

Section 3.4 Application of Proceeds.

(a) Subject to the terms of the Intercreditor Agreement, the Collateral Trustee will apply the proceeds of any collection, sale, foreclosure or other realization upon, or any Enforcement Action with respect to, any Collateral and the proceeds thereof (including the proceeds of any title insurance or other insurance policy required under any Parity Lien Document or otherwise covering the Collateral, and any condemnation proceeds with respect to the Collateral), in the following order of application:

FIRST, to the payment of all amounts payable hereunder on account of the Collateral Trustee's and the Trustee's fees and expenses and any legal fees, costs and expenses or other liabilities of any kind actually incurred by the Collateral Trustee and/or the Trustee or any co-trustee or agent of the Collateral Trustee in connection with any Parity Lien Document, including but not limited to amounts necessary to provide for the expenses of the Collateral Trustee in maintaining and

disposing of the Collateral (including, but not limited to, indemnification obligations and reimbursements);

SECOND, to the repayment of Indebtedness and other obligations in respect thereof (other than Parity Lien Obligations) secured by a Permitted Prior Lien on the Collateral sold or realized upon to the extent that such other Indebtedness or obligation is to be discharged (in whole or in part) in connection with such sale;

THIRD, to the respective Parity Lien Representatives equally and ratably for application to the payment of all outstanding Parity Lien Debt and any other Parity Lien Obligations that are then due and payable, in such order as is provided in the applicable Parity Lien Documents in an amount sufficient to pay in full in cash all outstanding Parity Lien Debt and all other Parity Lien Obligations that are then due and payable (including, to the extent legally permitted, all interest accrued thereon after the commencement of any Insolvency or Liquidation Proceeding at the rate, including any applicable post-default rate, specified in the applicable Parity Lien Documents, even if such interest is not enforceable, allowable or allowed as a claim in such proceeding, but excluding contingent indemnity and reimbursement obligations for which no claim has been made), and including the discharge or cash collateralization (at the lower of (1) 102% of the aggregate undrawn amount and (2) the percentage of the aggregate undrawn amount required for release of Liens under the terms of the applicable Parity Lien Document) of all other outstanding letters of credit and bankers' acceptances of the backstop thereof pursuant to arrangements reasonably satisfactory to the relevant issuing bank, if any, constituting Parity Lien Debt; and

FOURTH, any surplus remaining after Discharge of Parity Lien Obligations, to the Company or the applicable Guarantor, as the case may be, its successors or assigns, as the case may be, or to such other Persons as may be entitled to such amounts under applicable Legal Requirement or as a court of competent jurisdiction may direct.

In addition, notwithstanding the foregoing, if any Series of Parity Lien Debt has released its Lien on any Collateral pursuant to the terms of this Agreement, then unless such Lien is reinstated in accordance with the terms of any applicable Parity Lien Document, such Series of Parity Lien Debt and any related Parity Lien Obligations of that Series of Parity Lien Debt thereafter shall not be entitled to share in the proceeds of any Collateral so released by that Series of Parity Lien Debt.

(b) This **Section 3.4** is intended for the benefit of, and will be enforceable as a third party beneficiary by, each present and future holder of Parity Lien Obligations, each present and future Parity Lien Representative and the Collateral Trustee as holder of Parity Liens. The Parity Lien Representative of each future issuance of Additional Notes and each future Series of Parity Lien Debt will be required to deliver a Collateral Trust Joinder (including an Additional Secured Debt Designation) as provided in **Section 3.8** at the time of incurrence of such Series of Parity Lien Debt.

(c) In connection with the application of proceeds pursuant to **Section 3.4(a)**, except as otherwise directed by an Act of Parity Lien Debtholders, the Collateral Trustee may sell any non-cash proceeds for cash prior to the application of the proceeds thereof.

(d) In making the determinations and allocations in accordance with **Section 3.4(a)**, the Collateral Trustee may conclusively rely upon information supplied by the relevant Parity Lien Representative as to the amounts of unpaid principal and interest and other amounts outstanding with respect to its respective Parity Lien Debt and any other Parity Lien Obligations.

Section 3.5 Powers of the Collateral Trustee.

(a) The Collateral Trustee is irrevocably authorized and empowered to enter into and perform its obligations and protect, perfect, exercise and enforce its interest, rights, powers and remedies under the Parity Lien Security Documents and applicable Legal Requirement and in equity and to act as set forth in this Article 3 or, subject to the other provisions of this Agreement and the Intercreditor Agreement, as requested in any lawful directions given to it from time to time in respect of any matter by an Act of Parity Lien Debtholders.

(b) No Parity Lien Representative or holder of Parity Lien Obligations (other than the Collateral Trustee) will have any liability whatsoever for any act or omission of the Collateral Trustee, and the Collateral Trustee will have no liability whatsoever for any act or omission of any Parity Lien Representative or any holder of Parity Lien Obligations (other than the Collateral Trustee).

(c) All duties and obligations of the Collateral Trustee in this Article 3 shall be subject to and limited by Article 5 of this Agreement and any provisions of the Intercreditor Agreement, the Indenture and any other documentation for Parity Lien Debt and the Parity Lien Security Documents.

Section 3.6 Documents and Communications. The Collateral Trustee will permit each Parity Lien Representative and each holder of Parity Lien Obligations upon reasonable written notice and at reasonable times from time to time to inspect and copy, at the cost and expense of the party requesting such copies, any and all Parity Lien Security Documents and other documents, notices, certificates, instructions or communications received by the Collateral Trustee in its capacity as such.

Section 3.7 For Sole and Exclusive Benefit of Holders of Parity Lien Obligations. The Collateral Trustee will accept, hold, administer and enforce all Liens on the Collateral at any time granted, transferred or delivered to it and all other interests, rights, powers and remedies at any time granted to or enforceable by the Collateral Trustee and all other property of the Trust Estate solely and exclusively for the benefit of the present and future holders of Parity Lien Obligations, and will distribute all proceeds received by it in realization thereon or from enforcement thereof solely and exclusively pursuant to the provisions of **Section 3.4**.

Section 3.8 Additional Parity Lien Debt.

(a) The Collateral Trustee will, as collateral trustee hereunder, perform its undertakings set forth in **Section 3.1(a)** with respect to any Parity Lien Obligations constituting Additional Notes or a Series of Parity Lien Debt that is issued or incurred after the date hereof that:

(1) such Parity Lien Debt is identified as Parity Lien Debt in accordance with the procedures set forth in **Section 3.8(b)**; and

(2) the designated Parity Lien Representative identified pursuant to **Section 3.8(b)** signs a Collateral Trust Joinder and delivers the same to the Collateral Trustee.

(b) The Company will be permitted to designate as "Parity Lien Debt" hereunder any Parity Lien Debt incurred by the Company or any Guarantor after the date of this Agreement in accordance with the terms of all applicable Parity Lien Documents. The Company may only effect such designation by delivering to the Collateral Trustee an Additional Secured Debt Designation that:

(1) states that the Company or applicable Guarantor intends to incur additional Parity Lien Debt (" **Additional Parity Lien Debt**") that is permitted by each applicable Parity Lien Document to be secured with a Parity Lien equally and ratably with all previously existing and future Parity Lien Debt;

(2) specifies the name, address and contact information of the Parity Lien Representative for such series of Additional Parity Lien Debt for purposes of **Section 7.6**;

(3) attaches as Annex 1 to such Additional Secured Debt Designation a Reaffirmation Agreement in substantially the form attached as Annex 1 to **Exhibit A** of this Agreement, which Reaffirmation Agreement has been duly executed by the Company and each Guarantor; and

(4) states that the Company has caused a copy of the Additional Secured Debt Designation and the related Collateral Trust Joinder to be delivered to each then-existing Parity Lien Representative.

Although the Company shall be required to deliver a copy of each Additional Secured Debt Designation and each Collateral Trust Joinder to each then-existing Parity Lien Representative, the failure to so deliver a copy of the Additional Secured Debt Designation and/or Collateral Trust Joinder to any then-existing Parity Lien Representative shall not affect the status of such debt as Additional Parity Lien Debt if the other requirements of this **Section 3.8** are complied with. Notwithstanding the foregoing, nothing in this Agreement will be construed to allow the Company or any Guarantor to incur additional Indebtedness (including Additional Notes) unless otherwise permitted by the terms of all applicable Parity Lien Documents.

(c) With respect to any Parity Lien Obligations constituting Additional Notes or a Series of Parity Lien Debt that is issued or incurred after the date hereof, the Company and each of the Guarantors agrees to take such actions (if any) as may from time to time reasonably be requested by the Collateral Trustee, any Parity Lien Representative or any Act of Parity Lien Debtholders, and enter into such technical amendments, modifications and/or supplements to the then-existing Guarantees and Parity Lien Security Documents (or execute and deliver such additional Parity Lien Security Documents) as may from time to time be reasonably requested by such Persons (including as contemplated by **clause (d)** below), to ensure that the Additional Notes or the Additional Parity Lien Debt, as applicable, is secured by, and entitled to the benefits of, the Parity Lien Security Documents, and each Parity Lien Secured Party (by its acceptance of the benefits hereof) hereby agrees to, and authorizes the Collateral Trustee to enter into, any such technical amendments, modifications and/or supplements (and additional Parity Lien Security Documents). The Company and each Guarantor hereby further agrees that, if there are any recording, filing or other similar fees payable in connection with any of the actions to be taken pursuant to this **Section 3.8(c)** or **Section 3.8(d)**, all such amounts shall be paid by, and shall be for the account of, the Company and the respective Guarantors, on a joint and several basis.

(d) Without limitation of the foregoing, upon reasonable request of the Collateral Trustee (which shall have no obligation to request any action except as directed in an Act of Parity Lien Debtholders), any Parity Lien Representative or any Act of Parity Lien Debtholders, each Grantor agrees to take the following actions with respect to any real property Collateral (including Oil and Gas Properties (as defined in the Indenture as in effect on the date hereof)) with respect to all Additional Parity Lien Debt (it being understood that any such actions may be taken following the incurrence of any such Additional Parity Lien Debt on a post-closing basis if permitted by the Parity Lien Representative for such Additional Parity Lien Debt or the applicable Parity Lien Documents):

(1) each applicable Grantor shall enter into, and deliver to the Collateral Trustee a mortgage modification or new mortgage or deed of trust with regard to each real property subject to a mortgage or deed of trust (each such mortgage or deed of trust a "**Mortgage**" and each such property a "**Mortgaged Property**"), in proper form for recording in all applicable jurisdictions, in a form and substance reasonably satisfactory to the Collateral Trustee;

(2) each applicable Grantor will cause to be delivered a local counsel opinion (subject to customary assumptions and qualifications) to the effect that the Collateral Trustee has a valid and perfected Lien with respect to each such Mortgaged Property; and

(3) each applicable Grantor will cause a title company to have delivered to the Collateral Trustee an endorsement to each title insurance policy for any real property Collateral (excluding Oil and Gas Properties), if any, then in effect for the benefit of the Parity Lien Secured Parties, date down(s) or other evidence (which may include a new title insurance policy) (each such delivery, a "**Title Datedown Product**"), in each case insuring that (i) the priority of the Liens of the applicable Mortgage(s) as security for the Parity Lien Obligations has not changed and, if a new Mortgage is entered into, that the Lien of such new Mortgage securing the Parity Lien Debt then being incurred shall have the same priority as any existing Mortgage securing then-existing Parity Lien Obligations, (ii) since the later of the original date of such title insurance product and the date of the Title Datedown Product delivered most recently prior to (and not in connection with) such Additional Parity Lien Debt, there has been no change in the condition of title and (iii) there are no intervening liens or encumbrances which may then or thereafter take priority over the Lien of the applicable Mortgage(s), in each case other than with respect to Liens permitted by each Parity Lien Document.

ARTICLE 4
OBLIGATIONS ENFORCEABLE BY THE COMPANY AND THE OTHER GRANTORS

Section 4.1 Release of Liens on Collateral.

(a) The Collateral Trustee's Liens upon the Collateral will be automatically released:

(1) in whole (other than with respect to indemnification and other contingent obligations for which no claim has been made), upon Discharge of Parity Lien Obligations;

(2) as to any Collateral of a Guarantor that is (A) released as a Guarantor under each Parity Lien Document and (B) is not obligated (as primary obligor or guarantor) with respect to any other Parity Lien Obligations and so long as the respective release does not violate the terms of any Parity Lien Document which then remains in effect;

(3) as to any Collateral of the Company or a Guarantor that is sold, transferred or otherwise disposed of by the Company or any Guarantor to a Person that is not (either before or after such sale, transfer or disposition) the Company or a Guarantor in a transaction or other circumstance that complies with Section 5.11 of the Indenture (other than any obligation to apply proceeds of such Asset Disposition (as defined in the Indenture) as provided in such Section) and is permitted by all of the other Parity Lien Documents, at the time of such sale, transfer or other disposition or to the extent of the interest sold, transferred or otherwise disposed of; *provided* that the Collateral Trustee's Liens upon the Collateral will not be released if the sale or other disposition is subject to Article VI of the Indenture;

(4) as to a release of less than all or substantially all of the Collateral, if consent to the release of all Parity Liens on such Collateral has been given by, or the Collateral Trustee otherwise receives direction to release such Collateral in, an Act of Parity Lien Debtholders;

(5) in whole, if the Liens on such Collateral have been released in accordance with the terms of each Series of Parity Lien Debt;

(6) as to a release of all or substantially all of the Collateral, if (A) consent to the release of that Collateral has been given by the requisite percentage or number of holders of each Series of Parity Lien Debt at the time outstanding as provided for in the applicable Parity Lien Documents and (B) the Company has delivered an Officer's Certificate to the Collateral Trustee certifying that all such necessary consents have been obtained;

(7) if and to the extent, any Collateral becomes an Excluded Asset (as defined in the Indenture)

(8) and in the manner, required by Section 4.01(a) of the Intercreditor Agreement; and

(9) as ordered pursuant to applicable Legal Requirement under a final and nonappealable order or judgment of a court of competent jurisdiction.

(b) The Collateral Trustee agrees, for the benefit of the Company and the Guarantors that upon request of the Company, the Collateral Trustee will promptly execute (with such acknowledgements and/or notarizations as are required, or are otherwise reasonably requested by the Company) and deliver evidence of any release pursuant to **Section 4.1(a)**, **Section 4.4**, or **Section 4.5** to the Company or the applicable Guarantor; *provided* that to the extent the Company or any Guarantor requests the Collateral Trustee to take any action to acknowledge or deliver evidence of such release of Collateral in accordance with this **Section 4.1(b)**, the Company will deliver to the Collateral Trustee an Officer's Certificate and an Opinion of Counsel, each to the effect that such release of Collateral pursuant to the provisions described in **Section 4.1(a)**, **Section 4.4**, or **Section 4.5**, as applicable, does not violate the terms of each applicable Parity Lien Document and that all conditions precedent relating to such release provided for in each applicable Parity Lien Document have been complied with. In determining whether any such release of Collateral is permitted, the Collateral Trustee is entitled to conclusively rely on such Officer's Certificate and Opinion of Counsel furnished to it pursuant to the immediately preceding sentence. All actions taken pursuant to the provisions described in this **Section 4.1(b)** are at the sole cost and expense of the Company and the applicable Guarantor.

(c) The Collateral Trustee hereby agrees that:

(1) in the case of any release pursuant to **Section 4.1(a)(3)**, if the terms of any such sale, transfer or other disposition require the payment of the purchase price to be contemporaneous with the delivery of the applicable release, then, subject to the Intercreditor Agreement and at the written request of and at the expense of the Company or other applicable Grantor, the Collateral Trustee will either (A) be present at and deliver the release at the closing of such transaction, (B) deliver the release under customary escrow arrangements that permit such contemporaneous payment and delivery of the release or (C) provide in such release that it is conditional upon, and will be automatically effective upon, the payment of such purchase price having been made; and

(2) at any time when a Parity Lien Debt Default has occurred and is continuing, within one Business Day of the receipt by it of any Act of Parity Lien Debtholders pursuant to **Section 4.1(a)(4)**, the Collateral Trustee will deliver a copy of such Act of Parity Lien Debtholders to each Parity Lien Representative.

Section 4.2 Delivery of Copies to Parity Lien Representatives. The Collateral Trustee will deliver to each Parity Lien Representative a copy of each Officer's Certificate delivered to the Collateral Trustee pursuant to **Section 4.1(b)**, together with copies of all documents delivered to the Collateral Trustee with such Officer's Certificate. The Parity Lien Representatives will not be obligated to take notice thereof or to act thereon. Each Parity Lien Representative shall, within one Business Day after the receipt by it of the Officer's Certificate and proposed release instrument(s) delivered to the Collateral Trustee pursuant to **Section 4.1(b)**, deliver a copy of such notice to each registered holder of the Series of Parity Lien Debt for which it acts as Parity Lien Representative.

Section 4.3 Collateral Trustee not Required to Serve, File or Record. Subject to **Section 3.2**, the Collateral Trustee is not required to serve, file, register or record any instrument releasing or subordinating its Liens on any Collateral; *provided* that if the Company or any other Grantor shall make a written demand for (a) a termination statement under Section 9-513(c) of the uniform commercial code and prepares the termination statement, or (b) the release of any mortgage or deed of trust, and prepares such release for execution by the Collateral Trustee, the Collateral Trustee shall (i) file such termination statement or provide written authorization to the Company or such other Grantor to file such termination statement or (ii) execute such release of mortgage or deed of trust and record such release in the appropriate office, or provide written authorization to the Company to record such release of mortgage or deed of trust in such office, respectively.

Section 4.4 Release of Liens in Respect of Notes. In addition to any release pursuant to **Section 4.1** hereof, the Collateral Trustee's Parity Liens will no longer secure the Notes outstanding under the Indenture or any other Obligations under the Note Documents, and the right of the holders of the Notes to the benefits and proceeds of the Collateral Trustee's Parity Liens on the Collateral will terminate and be discharged in accordance with Section 14.05 of the Indenture.

Section 4.5 Release of Liens in Respect of any Series of Parity Lien Debt other than the Notes. In addition to any release pursuant to **Section 4.1** hereof, as to any Series of Parity Lien Debt other than the Notes, the Collateral Trustee's Parity Lien will no longer secure such Series of Parity Lien Debt if the requirements of a Discharge of Parity Lien Obligations are satisfied with respect to such Series of Parity Lien Debt and all Parity Lien Obligations related thereto.

ARTICLE 5
IMMUNITIES OF THE COLLATERAL TRUSTEE

Section 5.1 No Implied Duty. The Collateral Trustee will not have any fiduciary duties nor will it have responsibilities or obligations other than those expressly assumed by it in this Agreement, the other Parity Lien Security Documents to which it is a party and the Intercreditor Agreement. No implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement, the other Parity Lien Documents or the Intercreditor Agreement, or otherwise exist against the Collateral Trustee. Without limiting the generality of the foregoing sentences, the Collateral Trustee is not intended to have any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Legal Requirement. Instead, the terms "trustee", "collateral trustee" and "Collateral Trustee" are used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. The Collateral Trustee will not be required to take any action that is contrary to applicable

Legal Requirement or any provision of this Agreement, the other Parity Lien Security Documents or the Intercreditor Agreement.

Section 5.2 Appointment of Agents and Advisors. The Collateral Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, accountants, appraisers or other experts or advisors selected by it in good faith as it may reasonably require and will not be responsible for any misconduct or negligence on the part of any of them.

Section 5.3 Other Agreements. The Collateral Trustee has accepted its appointment as collateral trustee hereunder and is bound by the Parity Lien Security Documents executed by the Collateral Trustee as of the date of this Agreement, and the Collateral Trustee shall at the request of the Company execute additional Parity Lien Security Documents delivered to it after the date of this Agreement (including to secure Obligations arising under Additional Parity Lien Debt to the extent such Obligations are permitted to be incurred and secured under the Parity Lien Documents); *provided* that such additional Parity Lien Security Documents do not adversely affect the rights, privileges, benefits and immunities of the Collateral Trustee or conflict with the terms of the Intercreditor Agreement. The Collateral Trustee will not otherwise be bound by, or be held obligated by, the provisions of any credit agreement, indenture or other agreement governing Parity Lien Debt (other than this Agreement and the other Parity Lien Security Documents to which it is a party).

Section 5.4 Solicitation of Instructions.

(a) The Collateral Trustee may at any time solicit written confirmatory instructions, in the form of an Act of Parity Lien Debtholders, an Officer's Certificate or an order of a court of competent jurisdiction, as to any action that it may be requested or required to take, or that it may propose to take, in the performance of any of its obligations under this Agreement or the other Parity Lien Security Documents.

(b) No written direction given to the Collateral Trustee by an Act of Parity Lien Debtholders that in the sole judgment of the Collateral Trustee imposes, purports to impose or might reasonably be expected to impose upon the Collateral Trustee any obligation or liability not set forth in or arising under this Agreement and the other Parity Lien Security Documents will be binding upon the Collateral Trustee unless the Collateral Trustee elects, at its sole option, to accept such direction.

(c) The Collateral Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement at the request, order or direction of the Required Parity Lien Debtholders pursuant to the provisions of this Agreement, unless such holders shall have furnished to the Collateral Trustee reasonable security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby.

Section 5.5 Limitation of Liability. The Collateral Trustee will not be responsible or liable for any action taken or omitted to be taken by it hereunder or under any other Parity Lien Security Document, except for its own gross negligence or willful misconduct as determined by a final and nonappealable decision of a court of competent jurisdiction.

Section 5.6 Documents in Satisfactory Form. The Collateral Trustee will be entitled to require that all agreements, certificates, opinions, instruments and other documents at any time submitted to it, including those expressly provided for in this Agreement, be delivered to it in a form and with substantive provisions reasonably satisfactory to it.

Section 5.7 Entitled to Rely. The Collateral Trustee may seek and rely upon, and shall be fully protected in relying upon, any judicial order or judgment, upon any advice, opinion or statement of legal counsel, independent consultants and other experts selected by it in good faith and upon any certification, instruction, notice or other writing delivered to it by the Company or any Guarantor in compliance with the provisions of this Agreement or delivered to it by any Parity Lien Representative as to the holders of Parity Lien Obligations for whom it acts, without being required to determine the authenticity thereof or the correctness of any fact stated therein or the propriety or validity of service thereof. The Collateral Trustee may act in reliance upon any instrument comporting with the provisions of this Agreement or any signature believed by it in good faith to be genuine and may assume that any Person purporting to give notice or receipt or advice or make any statement or execute any document in connection with the provisions hereof or the other Parity Lien Security Documents has been duly authorized to do so. To the extent an Officer's Certificate or Opinion of Counsel is required or permitted under this Agreement to be delivered to the Collateral Trustee in respect of any matter, the Collateral Trustee may rely conclusively on an Officer's Certificate or Opinion of Counsel as to such matter and such Officer's Certificate or Opinion of Counsel shall be full warranty and protection to the Collateral Trustee for any action taken, suffered or omitted by it under the provisions of this Agreement and the other Parity Lien Security Documents.

Section 5.8 Parity Lien Debt Default. The Collateral Trustee will not be required to inquire as to the occurrence or absence of any Parity Lien Debt Default and will not be affected by or required to act upon any notice or knowledge as to the occurrence of any Parity Lien Debt Default unless and until it is directed by an Act of Parity Lien Debtholders.

Section 5.9 Actions by Collateral Trustee. As to any matter not expressly provided for by this Agreement or the other Parity Lien Security Documents, the Collateral Trustee will act or refrain from acting as directed by an Act of Parity Lien Debtholders and will be fully protected if it does so, and any action taken, suffered or omitted pursuant to hereto or thereto shall be binding on the holders of Parity Lien Obligations.

Section 5.10 Security or Indemnity in favor of the Collateral Trustee. The Collateral Trustee will not be required to advance or expend any funds or otherwise incur any financial liability in the performance of its duties or the exercise of its powers or rights hereunder unless it has been provided with security or indemnity reasonably satisfactory to it against any and all liability or expense which may be incurred by it by reason of taking or continuing to take such action.

Section 5.11 Rights of the Collateral Trustee. In the event of any conflict between any terms and provisions set forth in this Agreement and those set forth in any other Parity Lien Security Document, the terms and provisions of this Agreement shall supersede and control the terms and provisions of such other Parity Lien Security Document. In the event there is any bona fide, good faith disagreement between the other parties to this Agreement or any of the other Parity Lien Security Documents resulting in adverse claims being made in connection with Collateral held by the Collateral Trustee and the terms of this Agreement or any of the other Parity Lien Security Documents do not unambiguously mandate the action the Collateral Trustee is to take or not to take in connection therewith under the circumstances then-existing, or the Collateral Trustee is in doubt as to what action it is required to take or not to take hereunder or under the other Parity Lien Security Documents, it will be entitled to refrain from taking any action (and will incur no liability for doing so) until directed otherwise in writing by a request signed jointly by the parties hereto entitled to give such direction or by order of a court of competent jurisdiction.

Section 5.12 Limitations on Duty of Collateral Trustee in Respect of Collateral.

(a) Beyond the exercise of reasonable care in the custody of Collateral in its possession, the Collateral Trustee will have no duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto and the Collateral Trustee will not be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any Liens on the Collateral; *provided* that, notwithstanding the foregoing, the Collateral Trustee will, at the expense of the Company, engage counsel to execute, file or record UCC-3 continuation statements and other documents and instruments to preserve, protect or perfect the security interests granted to the Collateral Trustee (subject to the priorities set forth herein) if it shall receive a specific written request to execute, file or record the particular continuation statement or other specific document or instrument by any Parity Lien Representative. The Collateral Trustee shall deliver to each other Parity Lien Representative a copy of any such written request. The Collateral Trustee will be deemed to have exercised reasonable care in the custody of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which it accords its own property, and the Collateral Trustee will not be liable or responsible for any loss or diminution in the value of any of the Collateral by reason of the act or omission of any carrier, forwarding agency or other agent or bailee selected by the Collateral Trustee in good faith.

(b) Except as provided in **Section 5.12(a)**, the Collateral Trustee will not be responsible for the existence, genuineness or value of any of the Collateral or for the validity, perfection, priority or enforceability of the Liens in any of the Collateral, for the validity or sufficiency of the Collateral or any agreement or assignment contained therein, for the validity of the title of any Grantor to the Collateral, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral. The Collateral Trustee hereby disclaims any representation or warranty to the current and future holders of the Parity Lien Obligations concerning the perfection of the security interests granted to it or in the value of any Collateral. The Collateral Trustee shall not be under any obligation to the Trustee or any holder of Parity Lien Debt to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this or any other Parity Lien Security Document or the Intercreditor Agreement or to inspect the properties, books or records of the Company or any Guarantor.

Section 5.13 Assumption of Rights, Not Assumption of Duties. Notwithstanding anything to the contrary contained herein:

(1) each of the parties thereto will remain liable under each of the Parity Lien Security Documents (other than this Agreement) to the extent set forth therein to perform all of their respective duties and obligations thereunder to the same extent as if this Agreement had not be executed;

(2) the exercise by the Collateral Trustee of any of its rights, remedies or powers hereunder will not release such parties from any of their respective duties or obligations under the other Parity Lien Security Documents; and

(3) the Collateral Trustee will not be obligated to perform any of the obligations or duties of the Company or any Grantor.

Section 5.14 No Liability for Clean Up of Hazardous Materials. In the event that the Collateral Trustee is required to acquire title to an asset for any reason, or take any managerial action of any kind in regard thereto, in order to carry out any fiduciary or trust obligation for the benefit of another, which in the

Collateral Trustee's sole discretion may cause the Collateral Trustee to be considered an "owner or operator" under any environmental laws or otherwise cause the Collateral Trustee to incur, or be exposed to, any environmental liability or any liability under any other federal, state or local law, the Collateral Trustee reserves the right, instead of taking such action, either to resign as Collateral Trustee or to arrange for the transfer of the title or control of the asset to a court appointed receiver. The Collateral Trustee will not be liable to any Person for any environmental liability or any environmental claims or contribution actions under any federal, state or local law, rule or regulation by reason of the Collateral Trustee's actions and conduct as authorized, empowered and directed hereunder or relating to any kind of discharge or release or threatened discharge or release of any hazardous materials into the environment.

Section 5.15 Other Relationships with the Company and Guarantors. UMB Bank, N.A. and its Affiliates (and any successor Collateral Trustee and its Affiliates) may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with the Company or any Guarantor and its Affiliates as though it was not the Collateral Trustee hereunder and without notice to or consent of the Trustee. The Trustee and the other holders of the Parity Lien Obligations acknowledge that, pursuant to such activities, UMB Bank, N.A. or its Affiliates (and any successor Collateral Trustee and its Affiliates) may receive information regarding the Company or any Guarantor or its Affiliates (including information that may be subject to confidentiality obligations in favor of the Company, such Guarantor or such Affiliate) and acknowledge that the Collateral Trustee shall not be under any obligation to provide such information to the Trustee or the holders of the Parity Lien Obligations. Nothing herein shall impose or imply any obligation on the part of UMB Bank, N.A. (or any successor Collateral Trustee) to advance funds.

ARTICLE 6
RESIGNATION AND REMOVAL OF THE COLLATERAL TRUSTEE

Section 6.1 Resignation or Removal of Collateral Trustee. Subject to the appointment of a successor Collateral Trustee as provided in **Section 6.2** and the acceptance of such appointment by the successor Collateral Trustee:

(a) the Collateral Trustee may resign at any time by giving not less than 30 days' prior written notice of resignation to each Parity Lien Representative and the Company; and

(b) the Collateral Trustee may be removed at any time, with or without cause, by an Act of Parity Lien Debtholders.

Section 6.2 Appointment of Successor Collateral Trustee. Upon any such resignation or removal, a successor Collateral Trustee may be appointed by an Act of Parity Lien Debtholders, with, if no Event of Default has occurred and is continuing, the consent of the Company, which consent shall not be unreasonably withheld, delayed or conditioned. If no successor Collateral Trustee has been so appointed and accepted such appointment within 30 days after the predecessor Collateral Trustee gave notice of resignation or was removed, the retiring Collateral Trustee may (at the expense of the Company), at its option, appoint a successor Collateral Trustee, or petition a court of competent jurisdiction for appointment of a successor Collateral Trustee, which must be a bank or trust company:

(1) authorized to exercise corporate trust powers; and

(2) having a combined capital and surplus of at least $250,000,000.

The Collateral Trustee will fulfill its obligations hereunder until a successor Collateral Trustee meeting the requirements of this **Section 6.2** has accepted its appointment as Collateral Trustee and the provisions of **Section 6.3** have been satisfied.

Section 6.3 Succession. When the Person so appointed as successor Collateral Trustee accepts such appointment:

(1) such Person will succeed to and become vested with all the rights, powers, privileges and duties of the predecessor Collateral Trustee, and the predecessor Collateral Trustee will be discharged from its duties and obligations hereunder; and

(2) the predecessor Collateral Trustee will (at the expense of the Company) promptly transfer all Liens and collateral security and other property of the Trust Estate within its possession or control to the possession or control of the successor Collateral Trustee and will execute instruments and assignments as may be necessary or desirable or reasonably requested by the successor Collateral Trustee to transfer to the successor Collateral Trustee all Liens, interests, rights, powers and remedies of the predecessor Collateral Trustee in respect of the Parity Lien Security Documents or the Trust Estate.

Thereafter the predecessor Collateral Trustee will remain entitled to enforce the immunities granted to it in **Article 5** and the provisions of **Sections 7.8** and **7.9**, and said provisions will survive termination of this Agreement for the benefit of the predecessor of the Collateral Trustee.

Section 6.4 Merger, Conversion or Consolidation of Collateral Trustee. Any Person into which the Collateral Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Collateral Trustee shall be a party, or any Person succeeding to the business of the Collateral Trustee shall be the successor of the Collateral Trustee pursuant to **Section 6.3**, provided that (i) without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto, except where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding, such Person satisfies the eligibility requirements specified in clauses (1) and (2) of **Section 6.2** and (ii) prior to any such merger, conversion or consolidation, the Collateral Trustee shall have notified the Company and each Parity Lien Representative thereof in writing.

Section 6.5 Concerning the Collateral Trustee and the Parity Lien Representatives.

(a) Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed by the parties hereto that this Agreement has been signed by each Parity Lien Representative not in its individual capacity or personally but solely in its capacity as trustee, representative or agent for the benefit of the related holders of the applicable Series of Parity Lien Debt in the exercise of the powers and authority conferred and vested in it under the related Parity Lien Documents, and in no event shall such Parity Lien Representative, in its individual capacity, have any liability for the representations, warranties, covenants, agreements or other obligations of any other party under this Agreement, any Parity Lien Document or in any of the certificates, reports, documents, data notices or agreements delivered by such other party pursuant hereto or thereto.

(b) Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed by the parties hereto that this Agreement has been signed by UMB Bank, N.A. as Collateral Trustee, not in its individual capacity or personally but solely in its capacity as Collateral Trustee, and in no

event shall UMB Bank, N.A., in its individual capacity, have any liability for the representations, warranties, covenants, agreements or other obligations of any other party under this Agreement, any Parity Lien Document or in any of the certificates, reports, documents, data notices or agreements delivered by such other party pursuant hereto or thereto.

(c) Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed by the parties hereto that this Agreement has been signed by UMB Bank, N.A. as Trustee, not in its individual capacity or personally but solely in its capacity as Trustee, and in no event shall UMB Bank, N.A. or any other Parity Lien Representative, in its individual capacity, have any liability for the representations, warranties, covenants, agreements or other obligations of any other party under this Agreement, any Parity Lien Document or in any of the certificates, reports, documents, data notices or agreements delivered by such other party pursuant hereto or thereto.

(d) In entering into this Agreement, the Collateral Trustee shall be entitled to the benefit of every provision of the Indenture relating to the rights, exculpations or conduct of, affecting the liability of or otherwise affording protection to the "Collateral Trustee" thereunder. In no event will the Collateral Trustee be liable for any act or omission on the part of the Grantors or any Parity Lien Representative.

(e) Except as otherwise set forth herein, neither the Collateral Trustee nor any Parity Lien Representative shall be required to exercise any discretion or take any action, but shall be required to act or refrain from acting (and shall be fully protected in so acting or refraining from acting) solely upon the instructions of the applicable Required Parity Lien Debtholders as provided in the Indenture or the related Parity Lien Document; *provided* that neither the Collateral Trustee nor any Parity Lien Representative shall be required to take any action that (i) it in good faith believes exposes it to personal liability unless it receives an indemnification satisfactory to it from the applicable holders of the Parity Lien Obligations with respect to such action or (ii) is contrary to this Agreement, the Intercreditor Agreement or applicable Legal Requirement.

ARTICLE 7
MISCELLANEOUS PROVISIONS

Section 7.1 Amendment.

(a) Except as provided in the Intercreditor Agreement, no amendment or supplement to the provisions of any Parity Lien Security Document will be effective without the approval of the Collateral Trustee acting as directed by an Act of Parity Lien Debtholders, except that:

(1) any amendment or supplement that has the effect solely of:

(A) adding or maintaining Collateral, securing additional Parity Lien Obligations that were otherwise permitted by the terms of the Parity Lien Documents to be secured by the Collateral or preserving, perfecting or establishing the Liens thereon or the rights of the Collateral Trustee therein;

(B) curing any ambiguity, omission, mistake, defect or inconsistency;

(C) providing for the assumption of the Company's or any Guarantor's obligations under any Parity Lien Document in the case of a merger or consolidation or sale of all or

substantially all of the properties or assets of the Company or such Guarantor to the extent permitted by the terms of the Indenture and the other Parity Lien Documents, as applicable;

(D) making any change that would provide any additional rights or benefits to the holders of Parity Lien Debt or the Collateral Trustee, or that does not adversely reduce, impair or affect the rights of any holder of Parity Lien Debt or the Collateral Trustee under the Indenture or any other Parity Lien Document; or

(E) effecting any release of Collateral otherwise permitted under the Parity Lien Documents;

will become effective when executed and delivered by the Company or any other applicable Grantor party thereto and, if required for effectiveness according to its terms, the Collateral Trustee;

(2) no amendment or supplement that reduces, impairs or adversely affects the Collateral Trustee or any other Parity Lien Secured Party:

(A) to vote its outstanding Parity Lien Debt as to any matter described as subject to an Act of Parity Lien Debtholders or direction by the Required Parity Lien Debtholders (or amends the provisions of this **clause (2)** or the definition of "Act of Parity Lien Debtholders", "Discharge of Parity Lien Obligations," "Parity Lien", "Parity Lien Debt," "Parity Lien Obligations" or "Required Parity Lien Debtholders" or any other definition containing the words "Parity Lien" therein, or any other defined terms to the extent referenced or implicated therein),

(B) to share in the order of application described in **Section 3.4** in the proceeds of an Enforcement Action or realization on any Collateral that has not been released in accordance with the provisions described in **Sections 4.1**, **4.4** or **4.5**; or

(C) to require that Liens securing Parity Lien Obligations be released only as set forth in the provisions described in **Sections 4.1**, **4.4** or **4.5**,

will become effective without the consent of the requisite percentage or number of holders of each Series of Parity Lien Debt so adversely affected under the applicable Parity Lien Document;

(3) no amendment or supplement that imposes any obligation upon the Collateral Trustee or any Parity Lien Representative or adversely affects the rights of the Collateral Trustee or any Parity Lien Representative, respectively, in its individual capacity as such will become effective without the consent of the Collateral Trustee or such Parity Lien Representative, respectively; and

(4) any amendment or supplement (a) to the provisions of the Parity Lien Security Documents that releases Collateral will be effective only in accordance with the requirements set forth in **Section 4.1**, (b) that results in the Collateral Trustee's Liens upon the Collateral no longer securing the Notes and the other obligations under the Indenture and other Note Documents may only be effected in accordance with **Section 4.4** and (c) that results in the Collateral Trustee's Liens upon the Collateral no longer securing the Parity Lien Obligations and the other obligations under the Parity Lien Documents may only be effected in accordance with **Section 4.5**.

(b) Notwithstanding **Section 7.1(a)** but subject to **Sections 7.1(a)(2)** and **7.1(a)(3)**:

(1) any mortgage or other Parity Lien Security Document may be amended or supplemented with the approval of the Collateral Trustee acting as directed in writing by the Required Parity Lien Debtholders, unless such amendment or supplement would not be permitted under the terms of this Agreement, the Intercreditor Agreement or any Priority Lien Document;

(2) any amendment or waiver of, or any consent under, any provision of any security document that secures Priority Lien Obligations will apply automatically to any comparable provision of any comparable Parity Lien Security Document without the consent of or notice to any holder of Parity Lien Obligations and without any action by the Company or any Guarantor or any holder of Notes or other Parity Lien Obligations; and

(3) any mortgage or other Parity Lien Security Document may be amended or supplemented with the approval of the Collateral Trustee (but without the consent of or notice to any holder of Parity Lien Obligations and without any action by any holder of Notes or other Parity Lien Obligations) (i) to cure any ambiguity, defect or inconsistency, or (ii) to make other changes that do not have an adverse effect on the validity of the Lien created thereby.

(c) The Collateral Trustee will not enter into any amendment or supplement described above unless it has received an Officer's Certificate to the effect that such amendment or supplement will not violate the terms of any applicable Parity Lien Documents or result in a breach of any provision or covenant contained in the Intercreditor Agreement. Prior to executing any amendment or supplement pursuant to this **Section 7.1**, the Collateral Trustee will be entitled to receive an Opinion of Counsel of the Company to the effect that (i) such amendment or supplement will not violate the terms of any applicable Parity Lien Documents (which opinion may be subject to customary assumptions and qualifications) and (ii) the conditions precedent to the execution and delivery of such amendment and supplement have been complied with.

Section 7.2 Voting. In connection with any matter under this Agreement requiring a vote of holders of Parity Lien Debt, each Parity Lien Representative, at the request of the applicable Series of Parity Lien Debt, will cast its votes in accordance with the Parity Lien Documents governing such Series of Parity Lien Debt. The amount of Parity Lien Debt to be voted by a Series of Parity Lien Debt will equal (1) the aggregate principal amount of Parity Lien Debt held by such Series of Parity Lien Debt (including outstanding letters of credit constituting Parity Lien Debt, whether or not then available or drawn), plus, if applicable, (2) other than in connection with an exercise of remedies, the aggregate unfunded commitments to extend credit which, when funded, would constitute Indebtedness of such Series of Parity Lien Debt (to the extent such unfunded commitments have not been terminated by the holders of such Series of Parity Lien Debt). Following and in accordance with the outcome of the applicable vote under its Parity Lien Documents, the Parity Lien Representative of each Series of Parity Lien Debt will cast all of its votes under that Series of Parity Lien Debt as a block in respect of any vote hereunder.

Section 7.3 Further Assurances.

(a) The Company and each of the Guarantors will do or cause to be done all acts and things that may be required, or that the Collateral Trustee pursuant to an instruction in an Act of Parity Lien Debtholders may from time to time reasonably request, to assure and confirm that the Collateral Trustee holds, for the benefit of the Parity Lien Secured Parties, duly created and enforceable and perfected Liens upon the Collateral (including any property or assets constituting Collateral that are acquired or otherwise

become, or are required by any Parity Lien Document to become, Collateral after the date hereof), in each case, as contemplated by, and with the Lien priority required under, the Parity Lien Documents. In connection with any merger, consolidation or sale of assets of the Company or any Guarantor, the property and assets of the Person which is consolidated or merged with or into the Company or such Guarantor, to the extent that they are property or assets of the types that would constitute Collateral under the Parity Lien Security Documents, shall be treated as after-acquired property, and the Company or such Guarantor shall take such action as may be reasonably necessary to cause such property and assets to be made subject to the Parity Liens, in the manner and to the extent required under the Parity Lien Security Documents; *provided*, *however*, that if any Priority Lien Obligations are outstanding at such time, such after-acquired property shall only be required to become part of the Collateral securing any Series of Parity Lien Debt, if and to the extent that such after-acquired property becomes part of the Collateral securing the Priority Lien Obligations substantially concurrently therewith (unless the Priority Lien Secured Parties are unable to take, or decline to accept, a Lien on such after-acquired property).

(b) Upon the reasonable request of the Collateral Trustee (acting at the direction of a Parity Lien Representative) or any Parity Lien Representative at any time and from time to time, the Company and each of the Guarantors will promptly execute, acknowledge and deliver such Parity Lien Security Documents, instruments, certificates, notices and other documents, and take such other actions as shall be required or that the Collateral Trustee may request to create, perfect, protect, assure or enforce the Liens and benefits intended to be conferred, in each case as contemplated by the Parity Lien Documents for the benefit of the Parity Lien Secured Parties; *provided* that no such Parity Lien Security Document, instrument or other document shall be materially more burdensome upon the Company and the Guarantors than the Parity Lien Documents executed and delivered by the Company and the Guarantors on or about the date hereof (including, for the avoidance of doubt, any such documents delivered within the time periods set forth in Section 14.02 of the Indenture); *provided*, that if any Priority Lien Obligations are outstanding at such time, the execution, acknowledgement and delivery of such Parity Lien Security Documents, instruments, certificates, notices and other documents shall be required, and such actions shall be required to be taken, only if and to the extent that the same are executed, acknowledged and delivered, or such actions taken, with respect to the Priority Lien Obligations substantially concurrently therewith (it being understood that the Collateral Trustee shall have no liability whatsoever to determine whether such a document is materially burdensome and shall have no liability whatsoever with respect to this determination) (unless the Priority Lien Collateral Agent is unable to take, or declines to accept, a Lien on such after-acquired property).

(c) Notwithstanding the foregoing, neither the Company nor any Guarantor shall be required pursuant to this **Section 7.3** to execute, deliver, record or file any documents or other agreements, or to do or cause to be done any acts or things that are, in each case, described in Section 14.02 of the Indenture, to the extent applicable, prior to the expiration of the time period set forth therefor therein.

Section 7.4 Successors and Assigns.

(a) Except as provided in **Section 5.2**, the Collateral Trustee may not, in its capacity as such, delegate any of its duties or assign any of its rights hereunder, and any attempted delegation or assignment of any such duties or rights will be null and void. All obligations of the Collateral Trustee hereunder will inure to the sole and exclusive benefit of, and be enforceable by, each Parity Lien Representative and each present and future holder of Parity Lien Obligations, each of whom will be entitled to enforce this Agreement as a third-party beneficiary hereof, and all of their respective successors and assigns.

(b) Neither the Company nor any Guarantor may delegate any of its duties or assign any of its rights hereunder, and any attempted delegation or assignment of any such duties or rights will be null

and void. All obligations of the Company and the Guarantors hereunder will inure to the sole and exclusive benefit of, and be enforceable by, the Collateral Trustee, each Parity Lien Representative and each present and future holder of Parity Lien Obligations, each of whom will be entitled to enforce this Agreement as a third-party beneficiary hereof, and all of their respective successors and assigns.

Section 7.5 Delay and Waiver. No failure to exercise, no course of dealing with respect to the exercise of, and no delay in exercising, any right, power or remedy arising under this Agreement or any of the other Parity Lien Security Documents will impair any such right, power or remedy or operate as a waiver thereof. No single or partial exercise of any such right, power or remedy will preclude any other or future exercise thereof or the exercise of any other right, power or remedy. The remedies herein are cumulative and are not exclusive of any remedies provided by law.

Section 7.6 Notices. Any communications, including notices and instructions, between the parties hereto or notices provided herein to be given shall be given as follows:

If to the Collateral Trustee:	UMB Bank, N.A. 5555 San Felipe Street, Suite 870 Houston, Texas 77056 Telephone: 713-300-0586 Facsimile: 214-389-5949 Email: Shazia.Flores@umb.com Attention: Shazia Flores
If to the Company or any other Grantor:	SM Energy Company 1775 Sherman Street, Suite 1200 Denver, CO 80203 Telephone: (303) 863-4325 Facsimile: (303) 864-2598 Email: dcopeland@sm-energy.com Attention: Chief Financial Officer
If to the Trustee:	UMB Bank, N.A. 5555 San Felipe Street, Suite 870 Houston, Texas 77056 Telephone: 713-300-0586 Facsimile: 214-389-5949 Email: Shazia.Flores@umb.com Attention: Shazia Flores

and if to any other Parity Lien Representative, to such address as it may specify by written notice to the parties named above.

All notices and communications will be mailed by first class mail, certified or registered, return receipt requested, by overnight air courier guaranteeing next day delivery, delivered by hand, or delivered by

facsimile to the relevant address or number set forth above or, as to holders of Parity Lien Debt, its address shown on the register kept by the office or agency where the relevant Parity Lien Debt may be presented for registration of transfer or for exchange. Failure to mail or delivery by facsimile a notice or communication to a holder of Parity Lien Debt or any defect in it will not affect its sufficiency with respect to other holders of Parity Lien Debt.

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 (if a Business Day) and on the next Business Day thereafter (in all other cases) if delivered by hand or overnight courier service or sent by telecopy or on the date five Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 7.6 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 7.6. As agreed to in writing among the parties hereto from time to time, notices and other communications may also be delivered by e-mail to the e-mail address of a representative of the applicable person provided from time to time by such person.

If a notice or communication is mailed or delivered by facsimile in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

Section 7.7 Entire Agreement. This Agreement states the complete agreement of the parties relating to the undertaking of the Collateral Trustee set forth herein and supersedes all oral negotiations and prior writings in respect of such undertaking.

Section 7.8 Compensation; Expenses. The Grantors jointly and severally agree to pay, promptly upon demand:

(1) such compensation to the Collateral Trustee and its agents for its services provided pursuant to this Agreement as the Company and the Collateral Trustee may agree in writing from time to time;

(2) all reasonable and documented out-of-pocket costs and expenses incurred by the Collateral Trustee and its agents in the negotiation, preparation, execution, delivery, filing, recordation, administration or enforcement of this Agreement or any other Parity Lien Security Document or any consent, amendment, waiver or other modification relating hereto or thereto;

(3) all reasonable and documented out-of-pocket fees, expenses and disbursements of a single legal counsel (and, if necessary a single local legal counsel in each applicable jurisdiction) and any auditors, accountants, consultants or appraisers or other professional advisors and agents engaged by, the Collateral Trustee or any Parity Lien Representative incurred in connection with the negotiation, preparation, closing, administration, performance or enforcement of this Agreement and the other Parity Lien Security Documents or any consent, amendment, waiver or other modification relating hereto or thereto and any other document or matter requested by the Company or any Guarantor;

(4) all reasonable and documented out-of-pocket costs and expenses incurred by the Collateral Trustee and its agents in creating, perfecting, preserving or releasing the Collateral Trustee's Liens on the Collateral, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, and title insurance premiums;

(5) all other reasonable and documented out-of-pocket costs and expenses incurred by the Collateral Trustee and its agents in connection with the negotiation, preparation and execution of the Parity Lien Security Documents and any consents, amendments, waivers or modifications thereto and the transactions contemplated thereby or the exercise of rights or performance of obligations by the Collateral Trustee thereunder; and

(6) after the occurrence of any Parity Lien Debt Default, all fees, costs and expenses incurred by the Collateral Trustee, its agents and any Parity Lien Representative in connection with the preservation, collection, foreclosure or enforcement of the Collateral subject to the Parity Lien Security Documents or any interest, right, power or remedy of the Collateral Trustee or in connection with the collection or enforcement of any of the Parity Lien Obligations or the proof, protection, administration or resolution of any claim based upon the Parity Lien Obligations in any Insolvency or Liquidation Proceeding, including all fees and disbursements of attorneys, accountants, auditors, consultants, appraisers and other professionals engaged by the Collateral Trustee, its agents or the Parity Lien Representatives.

The agreements in this **Section 7.8** will survive repayment of all other Parity Lien Obligations and the removal or resignation of the Collateral Trustee and termination of this Agreement.

Section 7.9 Indemnity.

(a) The Grantors jointly and severally agree to defend, indemnify, pay and hold harmless the Collateral Trustee, each Parity Lien Representative, each holder of Parity Lien Obligations and each of their respective Affiliates and each and all of the directors, officers, partners, trustees, employees, attorneys and agents, and (in each case) their respective heirs, representatives, successors and assigns (each of the foregoing, an "**Indemnitee**") from and against any and all Indemnified Liabilities; *provided* that no Indemnitee will be entitled to indemnification hereunder with respect to any Indemnified Liability to the extent such Indemnified Liability is found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Indemnitee. THIS INDEMNITY COVERS ORDINARY NEGLIGENCE OF ANY OF THE FOREGOING PARTIES.

(b) All amounts due under this **Section 7.9** will be payable within 10 Business Days after written demand, together with a reasonably detailed invoice therefor.

(c) To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in **Section 7.9(a)** may be unenforceable in whole or in part because they violate any law or public policy, each of the Grantors will contribute the maximum portion that it is permitted to pay and satisfy under applicable Legal Requirement to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them.

(d) No party hereto will ever assert any claim against any other party hereto or any Indemnitee, on any theory of liability, for any lost profits or special, indirect or consequential damages or (to the fullest extent a claim for punitive damages may lawfully be waived) any punitive damages arising out of, in connection with, or as a result of, this Agreement or any other Parity Lien Document or any agreement or instrument or transaction contemplated hereby or relating in any respect to any Indemnified Liability, and each of the parties hereto hereby forever waives, releases and agrees not to sue upon any claim for any such lost profits or special, indirect, consequential or (to the fullest extent lawful) punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(e) The agreements in this **Section 7.9** will survive repayment of all other Parity Lien Obligations and the removal or resignation of the Collateral Trustee and termination of this Agreement.

Section 7.10 Severability. Any provision of this Agreement 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; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 7.11 Headings. Section headings herein have been inserted for convenience of reference only, are not to be considered a part of this Agreement and will in no way modify or restrict any of the terms or provisions hereof.

Section 7.12 Obligations Secured. All obligations of the Grantors set forth in or arising under this Agreement will be Parity Lien Obligations and are secured by all Liens granted by the Parity Lien Security Documents.

Section 7.13 Governing Law; Jurisdiction; Consent to Service of Process.

(a) THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES (BUT GIVING EFFECT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATION LAW).

(b) Each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any party hereto may otherwise have to bring any action or proceeding relating to this Agreement in the courts of any jurisdiction.

(c) Each party hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (b) of this **Section 7.13**. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in **Section 7.6**. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

Section 7.14 Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LEGAL REQUIREMENT, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 7.15 Counterparts, Electronic Signatures. This Agreement may be executed in any number of counterparts (including by facsimile), each of which when so executed and delivered will be deemed an original, but all such counterparts together will constitute but one and the same instrument. The parties hereto may sign this Agreement and any Collateral Trust Joinder and transmit the executed copy by electronic means, including facsimile or noneditable *.pdf files. The electronic copy of the executed Agreement and any Collateral Trust Joinder is and shall be deemed an original signature.

Section 7.16 Effectiveness. This Agreement will become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by each party of written notification of such execution and written or telephonic authorization of delivery thereof.

Section 7.17 Grantors and Additional Grantors. Each Grantor represents and warrants that it has duly executed and delivered this Agreement. The Company will cause each Person that hereafter becomes a Grantor or is required by any Parity Lien Document to become a party to this Agreement to become a party to this Agreement, for all purposes of this Agreement, by causing such Person to execute and deliver to the Collateral Trustee a Collateral Trust Joinder, whereupon such Person will be bound by the terms hereof to the same extent as if it had executed and delivered this Agreement as of the date hereof. The Company shall promptly provide each Parity Lien Representative with a copy of each Collateral Trust Joinder executed and delivered pursuant to this **Section 7.17**; *provided* that the failure to so deliver a copy of the Collateral Trust Joinder to any then-existing Parity Lien Representative shall not affect the inclusion of such Person as a Grantor if the other requirements of this **Section 7.17** are complied with.

Section 7.18 Insolvency. This Agreement will be applicable both before and after the commencement of any Insolvency or Liquidation Proceeding by or against any Grantor. The relative rights, as provided for in this Agreement, will continue after the commencement of any such Insolvency or Liquidation Proceeding on the same basis as prior to the date of the commencement of any such case, as provided in this Agreement.

Section 7.19 Rights and Immunities of Parity Lien Representatives. The Trustee and the Collateral Trustee will be entitled, to the extent applicable to such entity, to all of the rights, protections, immunities and indemnities set forth in the Indenture and any future Parity Lien Representative will be entitled to all of the rights, protections, immunities and indemnities set forth in the credit agreement, indenture or other agreement governing the applicable Parity Lien Debt with respect to which such Person will act as representative, in each case as if specifically set forth herein. In no event will any Parity Lien Representative be liable for any act or omission on the part of the Grantors or the Collateral Trustee hereunder.

Section 7.20 Intercreditor Agreement. Each Person that is secured hereunder, by accepting the benefits of the security provided hereby, (i) consents (or is deemed to consent), to the subordination of Liens

in favor of the Collateral Trustee as provided for in the Intercreditor Agreement, (ii) agrees (or is deemed to agree) that it will be bound by, and will take no actions contrary to, the provisions of the Intercreditor Agreement, and (iii) authorizes (or is deemed to authorize) and instructs (or is deemed to instruct) the Collateral Trustee on behalf of such Person to enter into, and perform under, the Intercreditor Agreement as "Second Lien Collateral Trustee" (as defined in the Intercreditor Agreement). The Collateral Trustee agrees, upon receipt of an Officer's Certificate and an Opinion of Counsel stating that the same is authorized or permitted under the Intercreditor Agreement, to enter into any amendments or joinders to the Intercreditor Agreement, without the consent of any holder of Parity Lien Obligations or the Trustee, to add additional Indebtedness as Priority Lien Debt, Parity Lien Debt or Junior Lien Debt (to the extent permitted to be incurred and secured by the applicable Secured Debt Documents) and add other parties (or any authorized agent or trustee therefor) holding such Indebtedness thereto and to establish that the Lien on any Collateral securing such Indebtedness ranks equally with the Liens on such Collateral securing the other Priority Lien Debt, Parity Lien Debt or Junior Lien Debt, as applicable, then outstanding. The foregoing provisions are intended as an inducement to the lenders under the Credit Agreement to extend credit to the Company, as the borrower under the Credit Agreement, and such lenders are intended third party beneficiaries of this provision and the provisions of the Intercreditor Agreement. Notwithstanding anything to the contrary contained herein, to the extent that any Lien on any Collateral is perfected by the possession or control of such Collateral or of any account in which such Collateral is held, and if such Collateral or any such account is in fact in the possession or under the control of the Priority Lien Collateral Agent, or of agents or bailees of the Priority Lien Collateral Agent, the perfection actions and related deliverables described in this Agreement or the other Parity Lien Security Documents in respect of such Collateral or of any account in which such Collateral is held shall not be required.

Section 7.21 Force Majeure. The Collateral Trustee shall not be liable for delays or failures in performance resulting from acts of God, strikes, lockouts, riots, acts of war, epidemics or pandemics, governmental regulations superimposed after the fact, communication line failures, computer viruses, power failures, earthquakes, fire or similar acts beyond its control.

Section 7.22 U.S.A. Patriot Act. The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the Collateral Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each Person or legal entity that establishes a relationship or opens an account with the Collateral Trustee. The parties to this Agreement will provide the Collateral Trustee with such information as it may request in order for the Collateral Trustee to satisfy the requirements of the U.S.A. Patriot Act.

The parties hereto have caused this Collateral Trust Agreement to be executed by their respective officers or representatives as of the day and year first above written.

COMPANY: SM ENERGY COMPANY

By: /s/ David W. Copeland
Name: David W. Copeland
Title: Executive Vice President, General Counsel and Corporate Secretary

[Signature Page to Collateral Trust Agreement]

UMB Bank, N.A., as Trustee under the Indenture

By: /s/ Shazia Flores
Name: Shazia Flores
Title: Vice President

UMB Bank, N.A., as Collateral Trustee

By: /s/ Shazia Flores
Name: Shazia Flores
Title: Vice President

[Signature Page to Collateral Trust Agreement]

EXHIBIT A

FORM OF
ADDITIONAL SECURED DEBT DESIGNATION

Reference is made to the Collateral Trust Agreement, dated as of June 17, 2020 (as amended, supplemented, amended and restated or otherwise modified and in effect from time to time, the "**Collateral Trust Agreement**"), among SM Energy Company, a Delaware corporation (the "**Company**"), the Guarantors from time to time party thereto, UMB Bank, N.A., as Trustee under the Indenture (as defined therein), and UMB Bank, N.A., as Collateral Trustee. Capitalized terms used but not otherwise defined herein have the meanings assigned to them in the Collateral Trust Agreement. This Additional Secured Debt Designation is being executed and delivered in order to designate additional secured debt as Parity Lien Debt entitled to the benefit of the Collateral Trust Agreement.

The undersigned, the duly appointed [*specify title*] of the Company hereby certifies on behalf of [*the Company or applicable Grantor*] that:

(A) [*the Company or applicable Grantor*] intends to incur additional Parity Lien Debt ("**Additional Parity Lien Debt**") which will be permitted by each applicable Parity Lien Document to be secured by a Parity Lien equally and ratably with all previously existing and future Parity Lien Debt;

(B) the name and address of the Parity Lien Representative for the Additional Parity Lien Debt for purposes of **Section 7.6** of the Collateral Trust Agreement is:

_____

_____

Telephone: __

Fax: __

(C) Attached as Annex 1 hereto is a Reaffirmation Agreement duly executed by the Company and each Guarantor, and

(D) the Company has caused a copy of this Additional Secured Debt Designation and the related Collateral Trust Joinder to be delivered to each existing Parity Lien Representative.

IN WITNESS WHEREOF, the Company has caused this Additional Secured Debt Designation to be duly executed by the undersigned officer as of _____, 20____.

SM ENERGY COMPANY

By: _____
Name:
Title:

ACKNOWLEDGEMENT OF RECEIPT

The undersigned, the duly appointed Collateral Trustee under the Collateral Trust Agreement, hereby acknowledges receipt of an executed copy of this Additional Secured Debt Designation.

UMB Bank, N.A., as Collateral Trustee

By: _____
Name:
Title:

ANNEX 1 TO ADDITIONAL SECURED DEBT DESIGNATION

FORM OF
REAFFIRMATION AGREEMENT

Reference is made to the Collateral Trust Agreement, dated as of June 17, 2020 (as amended, supplemented, amended and restated or otherwise modified and in effect from time to time, the "**Collateral Trust Agreement**"), among SM Energy Company, a Delaware corporation (the "**Company**"), the Guarantors from time to time party thereto, UMB Bank, N.A., as Trustee under the Indenture (as defined therein), and UMB Bank, N.A., as Collateral Trustee. Capitalized terms used but not otherwise defined herein have the meanings assigned to them in the Collateral Trust Agreement. This Reaffirmation Agreement is being executed and delivered as of _____, 20__ in connection with an Additional Secured Debt Designation of even date herewith which Additional Secured Debt Designation has designated additional Parity Lien Debt entitled to the benefit of the Collateral Trust Agreement.

Each of the undersigned hereby consents to the designation of additional secured debt as Parity Lien Debt as set forth in the Additional Secured Debt Designation of even date herewith and hereby confirms its respective guarantees, pledges, grants of security interests and other obligations, as applicable, under and subject to the terms of each of the Parity Lien Documents to which it is party, and agrees that, notwithstanding the designation of such additional indebtedness or any of the transactions contemplated thereby, such guarantees, pledges, grants of security interests and other obligations, and the terms of each Parity Lien Document to which it is a party, shall continue to be in full force and effect and such additional secured debt shall be entitled to all of the benefits of such Parity Lien Documents.

Governing Law and Miscellaneous Provisions. The provisions of ARTICLE 7 of the Collateral Trust Agreement will apply with like effect to this Reaffirmation Agreement.

IN WITNESS WHEREOF, each of the undersigned has caused this Reaffirmation Agreement to be duly executed as of the date written above.

[*names of the Company and Guarantors*]

By: _____
Name:
Title:

EXHIBIT B

FORM OF
COLLATERAL TRUST JOINDER - ADDITIONAL DEBT

Reference is made to the Collateral Trust Agreement, dated as of June 17, 2020 (as amended, supplemented, amended and restated or otherwise modified and in effect from time to time, the "**Collateral Trust Agreement**"), among SM Energy Company, a Delaware corporation (the "**Company**"), the Guarantors from time to time party thereto, UMB Bank, N.A., as Trustee under the Indenture (as defined therein), and UMB Bank, N.A., as Collateral Trustee. Capitalized terms used but not otherwise defined herein have the meanings assigned to them in the Collateral Trust Agreement. This Collateral Trust Joinder is being executed and delivered pursuant to **Section 3.8** of the Collateral Trust Agreement as a condition precedent to the debt for which the undersigned is acting as agent being entitled to the benefits of being additional Parity Lien Debt under the Collateral Trust Agreement.

[1. Joinder. The undersigned, _____, a _____, (the "**New Representative**") as [*trustee, administrative agent*] under that certain [*described applicable indenture, credit agreement or other document governing the additional secured debt*] hereby agrees to become party as a Parity Lien Representative under the Collateral Trust Agreement for all purposes thereof on the terms set forth therein, and to be bound by the terms of the Collateral Trust Agreement as fully as if the undersigned had executed and delivered the Collateral Trust Agreement as of the date thereof.][1]

[1][2]. Additional Secured Debt Designation

The undersigned, on behalf of itself and each holder of Obligations in respect of the [*Additional Notes*][*Series of Parity Lien Debt*] for which the undersigned is acting as Parity Lien Representative hereby agrees, for the enforceable benefit of each existing and future holder of Priority Lien Obligations, the Priority Lien Collateral Agent, all holders of each current and future Series of Parity Lien Debt, each other current and future Parity Lien Representative and each current and future holder of Parity Lien Obligations and as a condition to being treated as Parity Lien Debt under the Collateral Trust Agreement that:

(a) all Parity Lien Obligations will be and are secured equally and ratably by all Parity Liens at any time granted by the Company or any other Grantor to secure any Obligations in respect of any [*Additional Notes*][*Series of Parity Lien Debt*], whether or not upon property otherwise constituting collateral for such Series of Parity Lien Debt, and that all such Parity Liens will be enforceable by the Collateral Trustee for the benefit of the Parity Lien Secured Parties equally and ratably;

(b) the undersigned and each holder of Obligations in respect of the [*Additional Notes*][*Series of Parity Lien Debt*] for which the undersigned is acting as Parity Lien Representative are bound by the provisions of this Agreement, including the provisions relating to the ranking of Parity Liens and the order of application of proceeds from the enforcement of Parity Liens; and

(c) the Collateral Trustee shall perform its obligations under the Collateral Trust Agreement, the other Parity Lien Security Documents and the Intercreditor Agreement.

[1] Delete if Additional Parity Lien Debt constitutes Additional Notes

[2][3]. Governing Law and Miscellaneous Provisions. The provisions of ARTICLE 7 of the Collateral Trust Agreement will apply with like effect to this Collateral Trust Joinder.

IN WITNESS WHEREOF, the parties hereto have caused this Collateral Trust Joinder to be executed by their respective officers or representatives as of _____, 20____.

[*insert name of the new representative or the Trustee*]

By: _____
Name:
Title:

The Collateral Trustee hereby acknowledges receipt of this Collateral Trust Joinder and agrees to act as Collateral Trustee for the [*New Representative*][*Trustee*] and the holders of the Obligations represented thereby:

UMB Bank, N.A., as Collateral Trustee

By: _____
Name:
Title:

EXHIBIT C

FORM OF
COLLATERAL TRUST JOINDER - ADDITIONAL GRANTOR

Reference is made to the Collateral Trust Agreement, dated as of June 17, 2020 (as amended, supplemented, amended and restated or otherwise modified and in effect from time to time, the "**Collateral Trust Agreement**"), among SM Energy Company, a Delaware corporation (the "**Company**"), the Guarantors from time to time party thereto, UMB Bank, N.A., as Trustee under the Indenture (as defined therein), and UMB Bank, N.A., as Collateral Trustee. Capitalized terms used but not otherwise defined herein have the meanings assigned to them in the Collateral Trust Agreement. This Collateral Trust Joinder is being executed and delivered pursuant to **Section 7.17** of the Collateral Trust Agreement.

1. Joinder. The undersigned, _____, a _____, hereby agrees to become party as a Grantor under the Collateral Trust Agreement for all purposes thereof on the terms set forth therein, and to be bound by the terms of the Collateral Trust Agreement as fully as if the undersigned had executed and delivered the Collateral Trust Agreement as of the date thereof.

2. Governing Law and Miscellaneous Provisions. The provisions of Article 7 of the Collateral Trust Agreement will apply with like effect to this Collateral Trust Joinder.

IN WITNESS WHEREOF, the parties hereto have caused this Collateral Trust Joinder to be executed by their respective officers or representatives as of _____, 20____.

[_____]

By: _____
Name:
Title:

The Collateral Trustee hereby acknowledges receipt of this Collateral Trust Joinder and agrees to act as Collateral Trustee with respect to the Collateral pledged by the new Grantor:

UMB Bank, N.A., as Collateral Trustee

By: _____
Name:
Title:

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